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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1947

No. 390

SEABOARD AIR LINE RAILROAD COMPANY,
APPELLANT,

vs.

JOHN M. DANIEL, AS ATTORNEY GENERAL OF THE STATE OF SOUTH CAROLINA, AND W. P. BLACKWELL, AS SECRETARY OF STATE OF SOUTH CAROLINA

APPEAL FROM THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

FILED OCTOBER 7, 1947.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOV. 3, 1947.

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RULE TO SHOW CAUSE AND TEMPORARY RESTRAINING ORDER

Consideration of the verified complaint discloses that it raises important public questions. These involve the duties of the Attorney General and Secretary of State, two of the constitutional officers of this State, and the legality of the ownership and operation in this State of one of the three interstate trunk line railroad systems serving South Carolina. Many citizens, as well as other persons, firms and corporations doing business in this State, are intefested, directly and indirectly, in the prompt settlement of these questions. They are of both a public and emergency character. The Court for these reasons, takes the action in its original jurisdiction, subject to the decision on the Court as a whole; and

IT IS ORDERED That the defendants and each of them do show cause, if any they have, before the Supreme Court of South Carolina, in the Court Room in the State Capitol, at Columbia, South Carolina, on Monday, October 14, 1946, at ten o'clock in the forenoon, or as soon thereafter as the matter can be heard by the Court, why the relief prayed for in the complaint should not be granted; and that the defendants and each of them serve their return upon plaintiff's attorneys at No. 1207 Liberty Life Building, Columbia 7, South Carolina, within twenty days of the service hereof, exclusive of the day of such service; and

IT IS FURTHER ORDERED that, in the meanwhile and pending the further order of the Supreme Court, the defendant, the Honorable John M. Daniel, as Attorney General of South Carolina, be and he is

hereby restrained from enforcing or attempting to enforce section 7784 or section 7789 of the Code of Laws of South Carolina, 1942, against plaintiff, or collecting or attempting to collect any penalties therein prescribed from plaintiff.

Let this order and the verified complaint, together with the three exhibits to be filed therewith, be forthwith filed with the Clerk of the Supreme Court, and served on the defendants without delay.

(Signed) D. Gordon Baker,
Chief Justice, Supreme Court of South Carolina.

Florence, S. C.,
August 7, 1946.

COMPLAINT

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of South Carolina:

The complaint of Seaboard Air Line Railroad Company against the Honorable John M. Daniel, as Attorney General of the State of South Carolina, and the Honorable W. P. Blackwell, as Secretary of State of the State of South Carolina, respectfully alleges that:

1. Plaintiff Seaboard Air Line Railroad Company is a corporation organized and existing under the laws of the State of Virginia, having its principal office and place of business in the City of Norfolk, in said State, and brings this action asking this Honorable Court to adjudge and protect plaintiff's rights under the Constitution and the Interstate Commerce Act of the United States, in the particulars and for the reasons hereinafter more fully set forth.

2. Defendant, the Honorable John M. Daniel, is the duly elected, qualified and acting Attorney General of the State of South Carolina, and defendant, the Honorable W. P. Blackwell, is the duly elected, qualified and acting Secretary of State of the State of South Carolina.

3. On June 28, 1946, the Interstate Commerce Commission, as later more fully shown, acting pursuant to the authority conferred upon it by Section 5 of the Interstate Commerce Act (49 U. S. C. A., 5), issued its Report and Order in the proceedings before it relating to the reorganization of Seaboard Air Line Railway Company (hereinafter sometimes referred to as the "old company"), finding and ordering that plaintiff, in order to own and operate its railroad lines and other properties in South Carolina, is not required to comply with Section 8 of Article 9 of the Constitution of South Carolina and with Sections 7777 through 7779 of the Code of South Carolina of 1942, requiring plaintiff to incorporate as a corporation of the State of South Carolina; and finding and ordering that compliance with said constitutional and statutory provisions would effect an unnecessary and undue burden upon interstate commerce and would not be consistent with the public interest.

4. Plaintiff is the successor in ownership and operation of the properties of the old company constituting an extensive railroad system, comprising approximately 4,200 miles of railroad lines within and through the States of Virginia, North Carolina, South Carolina, Georgia, Florida and Alabama, and, as such, plaintiff is a common carrier of freight and passengers by railroad, subject to the provisions of the Acts of Congress relating to interstate commerce. Plaintiff

was organized for the purpose of carrying out the Plan of Reorganization of said old company which has been approved by the Interstate Commerce Commission and the District Courts of the United States for the Eastern District of Virginia and the Southern District of Florida, which are respectively the courts of primary and ancillary jurisdiction of the proceedings for the reorganization of the old company.

Pursuant to such Plan and with the approval of the Interstate Commerce Commission, under Section 5 of the Interstate Commerce Act (49 U. S. C. A., 5), plaintiff has acquired and is now operating the properties formerly belonging to the old company. Included in such properties now owned and operated by plaintiff, are 736 miles of railroad located in thirty counties of the State of South Carolina, including 136 miles of the main line extending from Monroe, North Carolina, to Atlanta, Georgia, 205 miles of the main north and south line of the Seaboard system between Hamlet, North Carolina, by way of Columbia, South Carolina, to Savannah, Georgia, and approximately 370 miles of the line extending from Hamlet, North Carolina, to Savannah, Georgia, by way of Charleston, South Carolina. In addition plaintiff owns over 600 separate tracts of miscellaneous real estate located in the State of South Carolina which are appurtenant to or are used or useful in connection with the operation of its system of railroads.

5. Pursuant to Section 5 of the Interstate Commerce Act (49 U. S. C. A., 5), plaintiff filed with the Interstate Commerce Commission its Application dated March 8, 1944, and thereafter its Supplemental Application and Amendment No. 2, dated January 23, 1946, a true copy of the latter being filed herewith as Ex-

hibit "A". By said Applications plaintiff sought authority to acquire and operate, on the terms and conditions and to the extent contemplated by the Plan of Reorganization of the old company, the railroad lines and other properties of the old company. Said Supplemental Application and Amendment No. 2, among other things, alleged in paragraph Eleventh, page 16:

> "Applicant proposes to qualify to do business as a foreign corporation in North Carolina, Georgia, Alabama, and Florida. The Constitution of South Carolina prohibits acquisition or operation by a foreign corporation of lines of railroad in South Carolina. It is not in the public interest that Applicant should be required to become a corporation of South Carolina, as well as of Virginia, and the requirement referred to is a substantial burden on interstate commerce. Applicant is advised that it will have power to acquire and operate the property in South Carolina described in the Amended Application, irrespective of said provisions of the Constitution of South Carolina, if such acquisition and operation shall be authorized by the Interstate Commerce Commission."

Plaintiff alleges, upon information and belief, that in accordance with the provisions of Section 5(2)(b) of the Interstate Commerce Act (49 U. S. C. A., 5(2)(b)) the Commission notified the Governor of the State of South Carolina of the pendency of plaintiff's Application and also of the filing of said Supplemental Application and Amendment No. 2 and afforded the Governor of South Carolina reasonable opportunity to be heard thereon, as required by the Interstate Commerce Act.

6. On June 28, 1946, the Commission by its Report and Order of that date, true copies of which are filed herewith as Exhibits B and C, respectively, approved the acquisition and operation by plaintiff of the lines of railroad and properties formerly owned by the old company, including said lines of railroad and properties located in the State of South Carolina. In said Report the Interstate Commerce Commission found *inter alia* as follows:

LIMITATIONS AND PROHIBITIONS OF STATE LAWS

"Of the railroad to be acquired by the new company, 736 miles are located in the State of South Carolina. This includes 136 miles of the main line extending from Monroe, N. C., to Atlanta, Ga., 205 miles of the main north and south line of the system between Hamlet, N. C., via Columbia, S. C., to Savannah, Ga., and approximately 370 miles of main-line mileage comprising substantially all of what is known as the 'East Carolina Lines'. In addition to the railroad mileage there are over 600 separate tracts of miscellaneous real properties located in South Carolina which are appurtenant to, or are used or useful in connection with the operation of, the railroad properties. The State of South Carolina has in its constitution a prohibition against the ownership and operation of railroads within the State by corporations of other states.

"There are provisions in the statutes of the State similar to the constitutional prohibition.

"To comply with the provisions of the constitution and statutes of South Carolina, it would be

necessary for the new company either (a) to form a separate subsidiary corporation to own and operate the system railroad in South Carolina, or (b) to form a separate South Carolina corporation and then consolidate that corporation with itself so that the resultant corporation would be a corporation both of South Carolina and Virginia. Either course would result in substantial expense. If a separate corporation were organized to own the South Carolina properties, those properties could not be leased to the Virginia corporation, but would have to be operated separately, requiring the maintenance of a separate corporate or- 26
ganization and of separate executive, operating and accounting organizations. This would involve an initial outlay estimated at $18,300 and continuing expenses estimated at approximately $305,000 a year. Creation of a separate South Carolina corporation and a subsequent consolidation would require an initial outlay estimated at $71,800 and continuing expenses estimated at approximately $1,000 a year, and would result in substantial difficulties for the new company both in effecting the 27
reorganization of the properties and in the future conduct of the new company's affairs. For example the constitution of South Carolina requires the general assembly to provide by law for the cumulative voting of stock in the election of directors, and the State statutes make such cumulative voting mandatory for all corporations of the State, including railroad corporations. The plan of reorganization does not contemplate, or permit, 28
that the new company's stock shall have such cumulative voting rights, and to give the stock such

rights at this time would involve a modification of the plan, which the new company is advised would require resubmission of the plan to the courts.

"It is argued that the restrictions imposed upon foreign railroad corporations by the constitution and statutes of South Carolina constitute a burden on interstate commerce which we have full power under the provisions of section 5 of the act to override. *Texarkana & F. S. Ry. Control*, 193 I. C. C. 521; *Kansas City Southern Ry. Co. Merger*, 254 I. C. C. 529; *Texas v. United States*, 292 U. S. 522. The new company is advised that if we authorized it to acquire and operate the properties of the system located in South Carolina it will have the power to do so irrespective of those restrictions. It suggests, however, that to avoid complications and trouble for the new company our report in these proceedings should contain specific reference to these restrictive provisions so as to show on its face that our order is intended to override them.

"The total operating revenues assigned in 1945 to the 736 miles of system railroad located in South Carolina amounted to over $25,000,000. Such revenues for 1940 were $7,700,000. For a normal year it is anticipated that they will be less than in 1945. The chief finance and accounting officer for the receivers says that the estimated expenses of maintaining a separate corporation to own and operate the railroad in South Carolina have been stated on a conservative basis and might not be materially reduced even though total operating revenues of the railroad in South Car-

olina were to decline to $7,000,000 or $8,000,000 a year.

"It would clearly be an unnecessary and undue burden on interstate commerce for the new company to be subjected to continuing expenses of over $300,000 a year to maintain a separate corporation to own and operate the railroad in South Carolina. It is not so clear, however, that the cost of organizing a corporation under the laws of South Carolina to acquire the properties in that State and thereafter consolidate the South Carolina corporation with the Virginia corporation, *viz.* $71,800, or the cost of maintaining the consolidated corporation as a South Carolina corporation, *viz.* $1,000 a year, would be unduly burdensome. Organization of a South Carolina corporation, and consolidation with the Virginia corporation, however, would cause substantial delay and needless expense. In *Texas v. United States, supra*, the Supreme Court, in discussing the purpose of the provisions of section 5 of the act, said (p. 530):

"'These broadening provisions of the Emergency Railroad Transportation Act, 1933, confirm and carry forward the purpose which led to the enactment of Transportation Act, 1920. * * * We found that Transportation Act, 1920, introduced into the federal legislation a new railroad policy, seeking to insure an adequate transportation service. * * * It is a primary aim of that policy to secure the avoidance of waste. * * * The authority given to the Commission to authorize consolidations, purchases, leases, operating contracts, and acquisition of control, was given in

aid of that policy. * * * The criterion to be applied by the Commission in the exercise of its authority to approve such transactions—a criterion reaffirmed by the amendments of Emergency Railroad Transportation Act, 1933—is that of the controlling public interest. * * *'

"The provisions of section 5 were further amended by the Transportation Act of 1940 which contains a declaration of the national transportation policy. The provisions as to relief from restraints, limitations and prohibitions of State law which would stand in the way of the execution of the policy of Congress were clarified and strengthened. In administering the provisions of section 5 and other provisions of the act we must do so with a view to carrying out the declared policy of Congress, including the promotion of economical and efficient service and the fostering of sound economic conditions in transportation. Corporate simplification wherever possible is in accord with this policy. Furthermore, a termination of a longstanding receivership of railroad properties is always a matter of substantial public interest. The delays that would result and the needless expense that would be incurred should the new company undertake to comply with the constitution and statutes of South Carolina requiring the creation of a separate corporation to acquire, or to acquire and operate, the railroad which the new company proposes to acquire and operate in that State would not accord with the national transportation policy and would not be consistent with the public interest.

"The provisions of section 5(11) will relieve the new company of the restraints, limitations and prohibitions of State law only insofar as may be necessary to enable it to carry into effect the transactions approved and provided for in accordance with the terms and conditions which we impose, and to hold, maintain, and operate any properties, and exercise any control or franchises acquired through such transactions."

The first and second paragraphs of the Order of the Commission, issued on June 28, 1946, upon said Report, are as follows:

"Further investigation of the matters and things involved in these proceedings having been made, hearings having been held and said division having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof:

"*It is ordered*, That, subject to the conditions with respect to the protection of employees stated in said report, the purchase by the Seaboard Air Line Railroad Company of the railroad properties and other assets of the Seaboard Air Line Railway Company or its receivers, or both, and the operation by the former of such railroads, including those operated under contract, lease or agreement, and the acquisition of control or joint control by the Seaboard Air Line Railroad Company through ownership of capital stock of certain other railroad companies and the Baltimore Steam Packet Company, described in the report aforesaid, upon the terms and conditions in said

report found just and reasonable, be, and it is
45 hereby approved and authorized."

7. On or about the 6th day of August, 1946, plaintiff applied to the defendant, Honorable W. P. Blackwell, as Secretary of State of South Carolina, for admission to do business in South Carolina as a foreign corporation, pursuant to Sections 7765, 7766 and 7767 of the Code of 1942, by tendering to him for filing a written stipulation or declaration, in due form, together with all copies and statements, as well as fees, required by said sections. At the same time, plaintiff exhibited to
46 the Secretary of State certified copies of the Report and Order of the Interstate Commerce Commission aforesaid and explained by letter (a duplicate original of which is herewith filed as Exhibit D) that thereby plaintiff was lawfully relieved from compliance with the provisions of Section 8 of Article 9 of the Constitution and Sections 7777 through 7779 of the Code of South Carolina of 1942, and that plaintiff was entitled to be admitted under Sections 7765, 7766 and 7767 of the Code of 1942. But said defendant notwithstanding
47 that it was his plain ministerial duty to accept said tender and file said documents, declined so to do.

Plaintiff alleges that the defendant Secretary of State, in acting as aforesaid, relied upon the provisions of Section 8 of Article 9 of the Constitution of South Carolina and of Sections 7777, 7778 and 7779 of the Code of 1942, and that such provisions were so construed and applied contrary to the Order of the Commission issued pursuant to the authority of Section 5 of the Interstate Commerce Act. Such action violated the rights specifically vested in plaintiff by and un-
48 der the provisions of said Section 5 of the Interstate Commerce Act. As so construed and applied by the de-

fendants, said provisions of the Constitution and statutes of South Carolina, and the acts of the defendants aforesaid, were and are in violation of the provisions of Section 8 of Article 1, of, and the due process and equal protection clauses of the Fourteenth Amendment to, the Constitution of the United States.

Plaintiff further alleges that the Order of the Commission, based upon its findings, affirmatively authorizes plaintiff to own and operate its railroad lines and other properties in South Carolina without complying with said provisions of the Constitution or statutes of this State. And plaintiff further alleges that, by reason of the foregoing, the Secretary of State should have accepted plaintiff's tender of compliance with the statutes of this State (Sections 7765, 7766 and 7767 of the Code of 1942) prescribing the terms and conditions upon which foreign corporations generally are admitted to transact business within South Carolina.

8. In connection with Section 7784 of the Code, which is a section imposing penalties, plaintiff points out that this section was Section 5 of the Act of 1902 (23 Stats., 1054) and properly appears in the Code. Plaintiff further points out that Section 7789 of the Code is another section imposing penalties, which, by reason of its appearance in the Code, might be held to be effective. Plaintiff alleges, however, that Section 7789 erroneously and improperly appears in the Code, because it was Section 4 of the Act of 1896 as amended in 1897 (22 Stats., 114, 514), and that said Act of 1896 was repealed by said Act of 1902. The penalty provisions of Section 7789 are, however, the same as those of Section 7784, and plaintiff hereafter refers to both sections in its allegations concerning the penalties.

9. Sections 7784 and 7789 of the Code provide in substance that it shall be unlawful for plaintiff to own or operate its lines of railroad and other properties in South Carolina without either becoming incorporated under the laws of South Carolina or consolidating with a corporation organized under the laws of said State and thereby becoming a South Carolina corporation; and each of said sections provides a penalty of $500.00 for each and every county in which plaintiff shall operate or attempt to operate its lines of railroad without so doing. Plaintiff construes said sections, upon the advice of counsel, as imposing such penalties for each day of operation. By Section 7784 it is made the duty of the defendant Attorney General to bring suit for the recovery of such penalties for each and every offense, and plaintiff alleges, that the defendant Attorney General asserts the validity of the said State constitutional and statutory provisions, notwithstanding the provisions of the Report and Order of the Interstate Commerce Commission and of Section 5 of the Interstate Commerce Act.

10. The statutes of South Carolina provide no method by which plaintiff can test in advance the validity as to plaintiff of Section 8 of Article 9 of the Constitution of South Carolina and Sections 7777, 7778, 7779, 7784, 7785 and 7789 of the Code. Plaintiff is confronted with the dilemma of either disobeying the Order of the Interstate Commerce Commission and failing to perform its public duties as a common carrier in South Carolina, or of subjecting itself to the danger of repeated suits in thirty different counties for the recovery of fines and penalties imposed by Sections 7784 and 7789. In these circumstances, plaintiff respectfully avers that it is entitled to invoke the jur-

isdiction of this Honorable Court in its original jurisdiction to test the validity as to plaintiff of the South Carolina constitutional and statutory provisions aforesaid; and, pending final hearing, to be awarded an order restraining the enforcement of said penalties, because said sections penalize the operation by plaintiff of its railroad and properties without plaintiff being accorded an advance opportunity to test the validity as to plaintiff of said provisions in the courts before becoming subject to enormous penalties (amounting to $15,000.00 for each and every day of operation during any two-year period before the bar of the statute of limitations (390(2) Code)). And the effect of said statutes is to require plaintiff to elect at its peril between disobedience to the Order of the Interstate Commerce Commission and subjection to such penalties, if such statutes should be held to be enforceable, the Order of the Interstate Commerce Commission and the provisions of the Interstate Commerce Act to the contrary notwithstanding. Plaintiff is thereby deprived of its property without due process of law and is denied the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

Plaintiff avers that it has no adequate way of testing such question in advance save by this action in this Honorable Court. If plaintiff should form a corporation to operate its lines of railroad and properties in South Carolina, or should consolidate with a corporation organized under the laws of South Carolina and become a South Carolina corporation, it would be contrary to the Plan of Reorganization and to the Order of the Interstate Commerce Commission and would, moreover, recognize the validity of said provisions of

the Constitution and laws of South Carolina as to
61 plaintiff, which plaintiff denies; and so long as plaintiff fails to comply with said provisions, it will be, on the election of the defendant Attorney General, subject to many suits to recover separate and cumulative penalties during each day that plaintiff's failure may continue.

11. Plaintiff is advised by counsel and alleges that if the constitutional and statutory provisions herein attacked be held not valid as to plaintiff and plaintiff is permitted to qualify to do business in South Caro-
62 lina as a foreign corporation, it will be subject to all laws of this State having appropriate relation to the supervision of this State over railroads within its borders, in the same manner and to the same extent as the old company was; including all matters essentially of state concern, such as all manner and kind of regulation (police and otherwise), directly by the state or municipal corporations, or other lawful agencies of either, such as the Public Service Commission and Boards of Health; as to all taxes, including *ad valorem*, franchise or license, and income; and as to all
63 matters relating to the jurisdiction of all courts, including service of process and venue.

12. Plaintiff alleges as an additional basis for the original jurisdiction of this Honorable Court in this suit that plaintiff's credit and financial future will be impaired and imperiled by the existence of a contingent liability of the size and character that would result from the accumulation of the penalties under Sections 7784 and 7789, amounting during any two-year
64 period to approximately $10,000,000.00, before the bar by the statute of limitations applies (Section 390(2) of the Code), so that plaintiff has no adequate remedy

at law; and plaintiff will be under serious threat of destruction of its credit and ability to perform its public duties as a common carrier, contrary to its rights under the Constitution and statute of the United States aforesaid, unless this Honorable Court will take this complaint into its original jurisdiction and protect plaintiff in the enjoyment of such rights by affirming the same and perpetually enjoining any violation thereof. 65

The original jurisdiction of this Honorable Court is also invoked because of the importance, public and emergency character of the questions involved, and the public interest in their prompt adjudication, to wit: 66

(a) Whether plaintiff is relieved from the prohibitions of the Constitution and statutes of this State, including the penalties imposed by the latter, as a legal consequence of the approval and authorization by the Interstate Commerce Commission in its Report and Order aforesaid, by virtue of the provisions of Section 5(11) of the Interstate Commerce Act (49 U. S. C. A. 5(11))?

(b) What is the duty of the Attorney General with reference to the penalties imposed by Sections 7784 and 7789 of the Code? 67

(c) What is the duty of the Secretary of State with reference to accepting and filing the written stipulation or declaration tendered him by plaintiff under Section 7765 of the Code?

(d) The public interest involved is the direct and indirect interest of many citizens of this State and of many persons, firms and corporations doing business in this State in the sound financial status and ability of plaintiff, as the owner and operator of one of the three large interstate systems of railroad serving this 68

State, so that plaintiff may properly discharge its public duties and render adequate service to the public.

Wherefore plaintiff prays:

1. That this Honorable Court adjudge that plaintiff is entitled to own and operate its railroad lines and other properties in South Carolina, without complying with Section 8 of Article 9 of the Constitution or Sections 7777, 7778 and 7779 of the Code of Laws of South Carolina 1942.

2. That the defendant Secretary of State be required to accept and file the papers and documents tendered him by plaintiff under Sections 7765 and 7766 of the Code of Laws of South Carolina 1942, upon the payment of the fees prescribed by Section 7767.

3. That the defendant Attorney General be perpetually enjoined from enforcing, or attempting to enforce, Section 7784 or Section 7789 of the Code of Laws of South Carolina 1942 against palintiff, or collecting, or attempting to collect, any penalties therein prescribed from plaintiff; and that he be temporarily so restrained pending the further order of this Honorable Court.

4. For such other and further relief as may be just and equitable in the premises.

J. B. S. LYLES,
Columbia, S. C.,
W. R. C. COCKE,
Norfolk, Virginia.
Attorneys for Plaintiff.

STATE OF SOUTH CAROLINA,
COUNTY OF RICHLAND.

Personally appears W. R. C. Cocke, who, on oath, says that he is an officer, to wit, General Counsel of Seaboard Air Line Railroad Company, a corporation and the plaintiff herein, duly elected by the Board of Directors of plaintiff, and makes this verification on its behalf, being thereunto duly authorized; that he has read the above complaint and that all the allegations thereof are true of his own knowledge, except as to those made on information and belief, and, as to those, that he believes them to be true.

Deponent further says that he is an attorney at law, duly admitted to practice in the State of Virginia and other States, and a citizen of said State, being a resident of the City of Norfolk, and is one of the attorneys for plaintiff herein.

Deponent further says that he has been General Counsel for the Receivers of Seaboard Air Line Railway Company, the old company mentioned in the complaint, since the appointment of the Receivers on December 23, 1930, and by reason thereof has become personally familiar with the reorganization proceedings before the Courts and the Interstate Commerce Commission referred to in the complaint; that by reason of the foregoing deponent has acquired personal knowledge concerning all allegations of the complaint and knows them to be true, except the allegation in the last paragraph of section 5, with reference to notice extended the Governor by the Interstate Commerce

Commission, which is made on information obtained from said Commission that he believes to be true.

W. R. C. COCKE,

Sworn to and subscribed before me this 6th day of August, 1946.

BERTA WALLACE (L.S.)

Nortary Public for South Carolina.

My Commission expires at the pleasure of the Governor.

STATE OF SOUTH CAROLINIA
IN THE SUPREME COURT
IN THE ORIGINAL JURISDICTION

Seaboard Air Line Railroad Company, Plaintiff,

against

John M. Daniel, as Attorney General of the State of South Carolina, and W. P. Blackwell, as Secretary of State of the State of South Carolina, Defendants.

SUMMONS

To the Defendants above named:

You are hereby summoned and required to answer the complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to said complaint upon the subscribers at their office, No. 1207 Liberty Life Building, Columbia 7, South Carolina, within twenty days after the service hereof, exclusive of the day of such service; and if you fail to answer the complaint within the time afore-

said, the plaintiff in this action will apply to the court for the relief demanded in the complaint.

W. R. C. Cox,
Norfolk, Virginia,

J. B. S. Lyles,
Columbia, S. C.,

Attorneys for Plaintiff.

August 6, 1946.

EXHIBIT "A"

INTERSTATE COMMERCE COMMISSION

WASHINGTON

I, W. P. BARTEL, Secretary of the INTERSTATE COMMERCE COMMISSION, do hereby certify that the attached is true copy of Supplemental Application and Amendment No. 2, filed January 31, 1946, in Finance Docket No. 14501, Seaboard Railway Company (Now Seaboard Air Line Railroad Company) Acquisition, the original of which is now on file and of record in the office of said Commission.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the Seal of said Commission this 25th day of July, A. D. 1946.

W. P. Bartel,
Secretary of the Interstate Commerce Commission.

(SEAL)

(Filed Jan. 31, 1946.)

BEFORE THE

INTERSTATE COMMERCE COMMISSION

Finance Docket No. 14,501
In the Matter of the Application
of
SEABOARD RAILWAY COMPANY

Under Section 5 of the Interstate Commerce Act for authority to acquire or lease the properties of certain carriers, to acquire trackage rights over, or joint use of, the properties of certain carriers and to acquire sole control of, or joint control of certain carriers.

SUPPLEMENTAL APPLICATION AND AMENDMENT NO. 2

LEONARD D. ADKINS,
Counsel.

New York, N. Y.
January 23, 1946.

BEFORE THE

INTERSTATE COMMERCE COMMISSION

IN THE MATTER OF THE APPLICATION *of* SEABOARD RAILWAY COMPANY, under Section 5 of the Interstate Commerce Act for authority to acquire or lease the properties of certain carriers, to acquire trackage rights over, or joint use of, the properties of certain carriers and to acquire sole control of, or joint control of certain carriers.	Finance Docket No. 14501.

SUPPLEMENTAL APPLICATION AND AMENDMENT NO. 2

Seaboard Air Line Railroad Company, the applicant, under its former name Seaboard Railway Company, heretofore filed with the Commission in this Finance Docket No. 14501 its application, dated March 8, 1944, and Amendment No. 1 thereto, dated April 11, 1944 (said Application, as amended by said Amendment No. 1, being hereinafter called the Application), for authority to acquire, on the terms and conditions and to the extent contemplated by the Plan of Reorganization of Seaboard Air Line Railway Company and certain of its affiliated companies (hereinafter and in the Application called the Plan, a copy of the Plan being Exhibit D to Applicant's application in Finance Docket No. 14500, hereinafter called the Securities Application), properties, control, leasehold interests, trackage rights and rights of joint use, as specified in the Application. As stated in the Application, the Applicant was organized for the purpose of carrying out the Plan and it is contemplated that the Applicant will acquire all or substantially all the assets of Seaboard Air Line Railway Company (hereinafter and in the Application called the Old Company) and of certain of its affiliated companies.

On September 6, 1944, the Applicant filed with the Commission in this Finance Docket No. 14501 its Supplemental Application No. 1 (hereinafter called the Seaboard-All Florida Application) for authority to acquire, upon the terms set forth in the Seaboard-All Florida Application, the properties of Seaboard-All Florida Railway, Florida Western & Northern Railroad Company and East and West Coast Railway (hereinafter and in the Seaboard-All Florida Applica-

tion called the Seaboard-All Florida Properties). By
93 report and order, dated September 30, 1944, the Commission authorized the purchase by the Applicant of the Seaboard-All Florida Properties upon the terms and conditions in said report found just and reasonable and in the manner therein described. A sale under foreclosure of the Seaboard-All Florida Properties to the Applicant was duly confirmed on October 2, 1945, by the District Court of the United States for the Southern District of Florida (hereinafter called the Florida Court) and a certified copy of the decree of the Florida Court confirming the sale has heretofore
94 been filed in this Finance Docket No. 14501. All appeals from the orders authorizing and confirming the sale of the All Florida Properties to the Applicant have been finally disposed of.

The District Court of the United States for the Eastern District of Virginia (hereinafter called the Virginia Court) and the Florida Court (hereinafter collectively called the Courts), by Final Decree of Foreclosure and Sale (hereinafter called the Decree), dated
95 April 12, 1945, directed the sale under foreclosure of the properties hereinafter described, which are hereinafter called the Foreclosed Properties. The Foreclosed Properties comprise (1) all properties of every kind, character and description of the Old Company on hand at May 31, 1945, other than the right of the Old Company to exist as a corporation and a reserve of cash or temporary cash investments in the amount of $10,000,000.00 plus an amount equal to the current liabilities of Legh R. Powell, Jr., and Henry W. Anderson, as Receivers of the Old Company (hereinafter
96 called the Seaboard Receivers) as of May 31, 1945, as shown by their books, for the payment of (a) such

costs, expenses, allowances, compensation and disbursements as the Courts shall hereafter find to be 97
properly chargeable against the receivership estate, (b) the liabilities of the Receivers for Federal income and excess profits taxes up to May 31, 1945, and (c) all expenses made and liabilities incurred by the Receivers in the discharge of their duty up to May 31, 1945, (2) all right, title and interest of the Receivers and the Old Company in and to all improvements made by the Receivers, between May 31, 1945, and the date of delivery to the Applicant of deeds to the Foreclosed Properties (hereinafter called the Delivery Date), to 98
the Foreclosed Properties and to the leased lines now operated by the Receivers, and (3) all additional real property, railroad equipment or other assets (other than current assets) acquired by the Receivers between May 31, 1945, and the Delivery Date, for use in connection with the operation of such properties.

The sale under foreclosure (hereinafter called the Foreclosure Sale) was duly held on May 31, 1945. The Reorganization Committee was the only bidder at the Foreclosure Sale and the Foreclosed Properties were 99
sold as an entirety to the Reorganization Committee for $52,000,500.00 subject to the terms of the Decree (including appropriate accounting, as provided in the Decree, in respect of the property described in clauses (2) and (3) of the last preceding paragraph) and to confirmation by the Courts. On June 29, 1945, the sale to the Reorganization Committee at the price of $52,000,500.00 ($500.00 in excess of the upset price fixed by the Decree) was duly confirmed and made absolute by the Courts by a Decree Confirming Sale, dated June 100
29, 1945.

The Foreclosed Properties include (1) the lines of
101 railroad of the Old Company specified at pages 21 to 25, both inclusive, of Item XXII of the Application, as hereby amended (the Application, as amended and supplemented by this Supplemental Application and Amendment No. 2, being hereinafter called the Amended Application), (2) the shares of stock specified in subdivision (B), on pages 2 to 5, both inclusive, of the Amended Application, as being owned by the Old Company or held for the benefit of the receivership estate of the Old Company by the Receivers, (3)
102 the additional securities stated in Articles Third and Fourth of this Supplemental Application and Amendment No. 2 to be included in the Foreclosed Properties, (4) the leasehold interests of the Old Company or the Receivers specified in subdivision (C) at page 6 of the Amended Application, and (5) the trackage and joint use rights of the Old Company or the Receivers specified in subdivision (D) at pages 7 to 10, both inclusive, of the Application.

By an Agreement dated May 25, 1945, between the
103 Reorganization Committee and the Applicant (hereinafter called the Purchase Agreement), a copy of which is Exhibit "A" hereto, the Reorganization Committee agreed to cause the Foreclosed Properties (except (a) property which the Reorganization Committee, with the approval of the Applicant, or the Applicant, may elect not to take, (b) not exceeding $200,000.00 to provide for such miscellaneous expenses of the Reorganization Committee between May 31, 1945, and the Delivery Date as shall not otherwise have been provided
104 for and (c) at the election of the Reorganization Committee with the approval of the Virginia Court, if the bonds of the Applicant to be issued under the Plan

shall bear interest from a date later than January 1, 1944, cash or temporary cash investments in an amount which, together with the amount distributed or estimated to be available for distribution on the securities affected by the Plan out of the earnings of the Foreclosed Properties from May 31, 1945, to the Delivery Date shall not exceed, unless the Applicant and the Reorganization Committee shall otherwise agree, $500,000.00 for each calendar month between January 1, 1944, and the date from which such bonds shall bear interest, such aggregate amount to be distributed pursuant to Section VI of the Plan in lieu of interest on such bonds from January 1, 1944, to the date from which such bonds shall bear interest) to be transferred to the Applicant subject to any necessary approval by this Commission of the acquisition or operation by the Applicant of the Foreclosed Properties. The Reorganization Committee further agreed to pay the $52,000,500.00 purchase price for the Foreclosed Properties in so far as such purchase price can be paid by the use of securities affected by the Plan which shall have become subject to the Plan and the Applicant agreed to pay the balance of such purchase price as and when such purchase price should be required to be paid by order or orders of the Courts. The Applicant agreed, in substance, to issue its securities as contemplated by the Plan.

The bonds to be issued pursuant to the Plan are to bear interest from a date not earlier than January 1, 1946. In December, 1945, by Order No. R-22, the Virginia Court directed that there should be distributed to holders of outstanding bonds subjected to the Plan a sum not exceeding $9,334,300.00, said sum to be applied to the payment of interest accrued for the year

1945 or, to the extent that the amount distributed on
109 any particular issue of bonds will exceed the interest accrued thereon for the year 1945, to interest accrued for the year 1944. Said amount will be distributed as among the different issues in accordance with Section VI of the Plan. If less than all of the bonds dealt with under the Plan are subjected thereto, the maximum amount so to be distributed will be correspondingly reduced.

Since the earnings for the period from May 31, 1945, to the Delivery Date cannot now be determined, it is not possible to tell how much of said sum will be pay-
110 able out of said earnings and how much will be payable out of cash to be reserved by the Reorganization Committee pursuant to the Purchase Agreement. However, the financial position of the Applicant will not ultimately be affected by the source from which such payment is made, since the Purchase Agreement contemplates that the Applicant will ultimately receive an amount substantially equivalent to the earnings from May 31, 1945, to the Delivery Date, less such amounts as are distributed to bondholders out of such earnings,
111 either pursuant to said Order No. R-22 or because certain bondholders elect not to participate in the Plan and become entitled to receive their proportionate shares of such earnings as finally determined.

In substance, the Applicant will ultimately receive (in addition to the physical properties and other assets hereinabove referred to) an amount equal to the net current assets and net reserves in the hands of the Receivers at the Delivery Date less (a) such part of
112 the sum of $10,000,000.00 reserved by the Final Decree (or such smaller sum as represents the balance then remaining of said $10,000,000.00 reserve fund) as may

be required to be used for the purposes therein specified, (b) the $9,334,300.00 to be distributed pursuant to Order No. R-22 and (c) any additional participation in earnings subsequent to May 31, 1945, to which any dissenting bondholders may be entitled in excess of such dissenting bondholder's share of said sum of $9,334,300.00.

There is attached as Exhibit G to Supplemental Application No. 1 dated January 15, 1946, to the Securities Application a statement showing (a) the distributive shares under the Decree of bonds not deposited under the Plan at the date of said Supplemental Application, exclusive of any amounts payable out of earnings subsequent to May 31, 1945, and (b) the estimated market value of new securities distributable in respect of such undeposited bonds under the Plan. It will be noted that the market value of such new securities is substantially in excess of the distributive share thereof in the case of each issue of bonds involved.

The Foreclosed Properties cannot be transferred to the Applicant prior to the entry of an appropriate order by this Commission under Section 5 of the Interstate Commerce Act and the Applicant respectfully requests that such order be entered forthwith upon the basis of the Amended Application.

The Applicant hereby amends the Application as follows:

FIRST: Amend subdivision (B) of the Application at page 2 thereof by adding to the railroads, the sole control of which through ownership of capital stock is requested, Tampa Northern Railroad Company. Sole Control of Tampa Northern Railroad Company is requested by the Applicant by acquisition of all the out-

standing stock of Tampa Northern Railroad Company,
117 to wit, 2,500 shares of Preferred Stock, par value $100.00 per share, and 5,000 shares of Common Stock, par value $100.00 per share.

SECOND: Amend subdivision (C) of the Application at page 6 thereof by deleting the Georgia and Alabama Terminal Company lease, the Tampa & Gulf Coast Railroad Company lease and the lease from Central of Georgia Railway Company specified therein. Said leases (other than said lease from Central of Georgia Railway Company) have been, or will be disaffirmed by the Receivers prior to the Delivery Date. Said lease
118 from Central of Georgia Railway Company is dealt with in Section Fifth, below.

THIRD: Amend subdivision (E) of the Application at page 10 thereof to read as follows:

> "(E) the properties of the following railroad subsidiaries of the Old Company, such properties to be acquired at such time or times as Applicant may determine, after acquisition at the Delivery Date of control of said subsidiaries:
>
> 119 Brooksville and Inverness Railway
> Charlotte Harbor & Northern Railway Company
> Georgia & Alabama Terminal Company
> Prince George and Chesterfield Railway
> Tampa & Gulf Coast Railroad Company
> Tampa Northern Railroad Company
>
> (including its ownership of 100 shares of 300 outstanding shares of stock of Tampa Union Station Company);"

120 The Foreclosed Properties include all the outstanding stock and funded debt of said subsidiaries except

a small amount of Tampa Northern Railroad Company First Mortgage 5% Bonds which will be paid or 121
acquired prior to the Delivery Date, and except certain bonds of Georgia & Alabama Terminal Company (hereinafter called G&A Terminal) and Tampa & Gulf Coast Railroad Company (hereinafter called Tampa & Gulf Coast); which are hereinafter described.

It is contemplated that (1) at the Delivery Date the Applicant will acquire control of said subsidiaries (other than G&A Terminal and Tampa & Gulf Coast) by acquisition of all the outstanding stock and funded debt, if any, of said subsidiaries, (2) after the Deliv- 122
ery Date, the Applicant will operate the properties of such subsidiaries (other than as aforesaid) on the basis of the leases pertaining to such properties specified in subdivision (C) at page 6 of the Application and (3) after the Delivery Date, the Applicant will acquire the properties of said subsidiaries (other than as aforesaid) at such time or times as the Applicant may deem expedient.

The acquisition of the properties of said subsidiaries (other than as aforesaid), after acquisition of their 123
control, will involve no cash outlay by the Applicant other than payment of any miscellaneous expenses involved in the dissolution and transfer of the assets of said subsidiaries.

The Foreclosed Properties include all outstanding stock of G&A Terminal and Tampa & Gulf Coast, and $600,000.00 principal amount, of Improvement and Extension Bonds of Tampa & Gulf Coast. G&A Terminal has outstanding $1,000,000.00, principal amount, of First Mortgage Bonds, of which $978,000.00 have 124
been deposited under the Plan. Tampa & Gulf Coast has outstanding $1,184,000.00 principal amount, of

First Mortgage Bonds, of which $1,127,000.00 have
been deposited under the Plan. It is contemplated that
at the Delivery Date the Applicant will acquire all out-
standing securities of G&A Terminal and Tampa &
Gulf Coast, other than any of such First Mortgage
Bonds not then deposited under the Plan. It is contem-
plated that the Applicant will acquire the properties
of said subsidiaries after the Delivery Date, at such
time or times as the Applicant may deem expedient.
Such acquisition will involve no cash outlay except for
miscellaneous expenses and such amount as may be re-
quired to acquire any of said First Mortgage Bonds
which may not be so deposited. Pending such acquisi-
tion, the Applicant proposes to operate the properties
of G&A Terminal and Tampa & Gulf Coast, as stated
in subdivisions (H) and (I) of the Amended Applica-
tion.

FOURTH: Amend subdivision (F) of the Application at page 11 thereof to read as follows:

"(F) either (1) such control of Georgia, Flor-
ida & Alabama Railroad Company (hereinafter
called the GF&A) as may result from the acquisi-
tion by the Applicant from the Reorganization
Committee of not less than $1,574,000, principal
amount, GF&A First Mortgage and Refunding
6% Bonds (hereinafter called the GF&A Bonds)
and from the Old Company, as part of the Fore-
closed Properties, of 10,000 shares of GF&A Com-
mon Stock or (2) such control of GF&A, or any
successor corporation to GF&A, as may result
from the acquisition of such securities as may be
issued by GF&A or such successor in respect of
the GF&A Bonds owned by the Applicant under
any reorganization of GF&A; and the Applicant

further requests authority (1) to operate the GF&A properties after the Delivery Date and pending the reorganization of the GF&A, for account of the GF&A, the earnings of the GF&A Properties to be determined on such basis as may be approved by the District Court of the United States for the Middle District of Georgia and accepted by the Applicant."

The Foreclosed Properties include all the outstanding Common Stock of GF&A. The GF&A First Preferred Stock and Second Preferred Stock are outstanding in the hands of the public. By order dated February 8, 1944, of the Virginia Court, the Reorganization Committee was directed to acquire, at $750.00 flat per $1,000.00 GF&A Bond, all GF&A Bonds tendered to the Reorganization Committee. Said price represents the amount of cash allocable to each $1,000.00 GF&A Bond under the Plan. Since that date to and including December 31, 1945, the Reorganization Committee has purchased upon said terms $1,574,000.00, principal amount, GF&A Bonds. Pursuant to the Purchase Agreement the Reorganization Committee has agreed to deliver to the Applicant on the Delivery Date all GF&A Bonds then held by the Reorganization Committee.

On July 12, 1944, the GF&A filed its petition with the District Court of the United States for the Middle District of Georgia for a reorganization under Section 77 of the Bankruptcy Act and said petition was approved by said Court on the same date. The properties of GF&A are at present operated by the Seaboard Receivers for the account of GF&A.

FIFTH: After subdivision (G) of the Application add the following subdivisions (H), (I), and (J).

"(H) the right to operate the G&A Terminal properties, from the Delivery Date to the date of acquisition of the properties of G&A Terminal, under a lease, terminable by either party on thirty days notice, providing for the payment of a nominal rental sufficient to cover necessary corporate expenses and taxes."

As stated above, the Foreclosed Properties include 300,000 shares of Common Stock of G&A Terminal, being all the outstanding stock of G&A Terminal. The only funded debt of G&A Terminal consists of $1,000,000.00, principal amount, G&A Terminal First Mortgage 5% Bonds, which are dealt with under the Plan. As of December 31, 1945, all but $22,000.00, principal amount, of the G&A Terminal Bonds had been deposited under the Plan.

The lease of the properties of G&A Terminal (specified at page 6 of the Application) is to be disaffirmed by the Receivers. Authority is requested by the Applicant to operate the properties of G&A Terminal from the Delivery Date to the date of acquisition of such properties by the Applicant on the basis stated above. A copy of the proposed temporary lease from G&A Terminal to the Applicant will be filed with the Commission as soon as it is prepared.

"(I) the right to operate the properties of Tampa & Gulf Coast from the Delivery Date to the date of acquisition of the properties of Tampa and Gulf Coast under a lease, terminable by either party on thirty days notice, providing for the payment of a nominal rental, sufficient to pay necessary corporate expenses and taxes;"

As stated above, the Foreclosed Properties include 2,500 shares of Tampa & Gulf Coast Stock, being all 137
the outstanding stock of Tampa & Gulf Coast and $600,000.00 of Improvement and Extension Mortgage Bonds of Tampa and Gulf Coast. The only other outstanding securities of Tampa and Gulf Coast are $1,184,000.00 of First Mortgage Bonds which are dealt with under the Plan. As of December 31, 1945, all but $57,000.00 of the Tampa & Gulf Coast First Mortgage Bonds has been deposited under the Plan.

The lease of the Tampa & Gulf Coast properties 138
(specified at page 6 of the Application) has been disaffirmed by the Seaboard Receivers and the Seaboard Receivers are operating the property for the account of Tampa & Gulf Coast. Authority is requested by the Applicant to operate the Tampa & Gulf Coast properties from the Delivery Date to the date of acquisition of such properties on the basis aforesaid. A copy of the proposed temporary lease from Tampa & Gulf Coast to the Applicant will be filed with the Commission as soon as it is prepared.

"(J) The right to operate under lease the prop- 139
erty of Central of Georgia Railway Company covered by the lease dated March 28, 1896, described on page 6 of the original application, being a line of railroad from Meldrim, Georgia, to Lyons, Georgia, approximately 57.48 miles, on the terms hereinafter stated."

The Decree will give the Applicant the right to elect at any time within one year after the Delivery Date whether or not it will assume any lease which consti- 140
tuted part of the Foreclosed Properties. The lease dated March 28, 1896, from Central of Georgia Rail-

way Company to a predecessor of the old company
141 (hereinafter called the Old Life) is one of the leases which the Applicant will have the right to elect not to assume under the provision above referred to. The Applicant is advised that the Seaboard Receivers propose to discuss with the Trustee of Central of Georgia Railway Company a modification of such lease looking toward a reduction of the rent payable thereunder, which is now approximately $42,500.00 per annum. A copy of the Old Lease was filed as an exhibit at the hearing on the Application. The Applicant desires au-
142 thority

(a) to operate the property covered by the Old Lease under the Old Lease (if not revised or modified prior to the Delivery Date) from the Delivery Date until the Old Lease shall be modified, revised or terminated or until the Applicant shall elect not to assume the Old Lease;

(b) if the Old Lease shall be revised or a new lease substituted therefor prior to the Delivery
143 Date, to operate under such revised or new lease, provided that the rent payable thereunder shall not be in excess of the rent payable under the Old Lease; and

(c) if the Old Lease shall not have been revised or a new lease made prior to the Delivery Date, to make a new lease with the Trustee of Central of Georgia Railway Company or his successor at any time within one year after the Delivery Date on terms not more burdensome that the terms of
144 the Old Lease and thereafter to operate under such lease for the period thereof

SIXTH: Amend Item I at page 13 of the Application to read as follows:

"The full and correct name and business address of the Applicant are

Seaboard Air Line Railroad Company,

Norfolk 10, Virginia."

SEVENTH: Amend Items VIII, IX and X at pages 15 and 16 of the Application to read as follows:

"VIII

"The names and business addresses of the ~~subscrib~~ Directors of Applicant are:

Name	*Business Address*
Leonard D. Adkins	15 Broad Street, New York 5, N. Y.
Tristan Antell	40 Wall Street, New York 5, N. Y.
Joseph France	1409 Mercantile Trust Building, Baltimore & Calvert Streets, Baltimore 2, Maryland.
Otis A. Glazebrook, Jr.	40 Wall Street, New York 5, N. Y.
Charles H. Jagow	15 Broad Street, New York 5, N. Y.
S. Ralph Warnken	First National Bank Building, Light Street, Baltimore 2, Maryland.
James B. McDonough, Jr.	15 Broad Street, New York 5, N. Y.

"IX

149 "The names, titles and business addresses of Applicant's officers are:

Name	*Office*	*Business Address*
Otis A. Glazebrook, Jr.	President	40 Wall Street, New York 5, N. Y.
Joseph France	Vice-President	1409 Mercantile Trust Bldg. Baltimore & Calvert Streets, Baltimore 2, Maryland.
S. Ralph Warnken	Vice-President	First National Bank Bldg. Light Street, Baltimore 2, Maryland.
150 Tristan Antell	Secretary and Treasurer	40 Wall Street, New York 5, N. Y.
Charles H. Jagow	Assistant Secretary	15 Broad Street, New York, N. Y.
James B. McDonough, Jr.	Assistant Treasurer	15 Broad Street, New York 5, N. Y.

"X

"The names and business addresses of the subscribers to the Applicant's stock are:

151

Name	*No. of Shares Subscribed*	*Business Address*
Joseph France	1	1409 Mercantile Trust Bldg. Baltimore & Calvert Streets, Baltimore 2, Maryland.
Otis A. Glazebrook, Jr.	1	40 Wall Street, New York 5, N. Y.
S. Ralph Warnken	1	First National Bank Bldg. Light Street, Baltimore 2, Maryland."

152 EIGHTH: Amend Item X of the Application at pages 19 and 20 thereof to read as follows:

"The proposed transaction is to be effected pursuant to the terms and conditions of the Plan.

"It is contemplated that when the Foreclosed Properties are acquired by the Applicant on the Delivery Date they will be subject only to the liens of any taxes and assessments levied and assessed against the Foreclosed Properties, the liens of certain equipment trust obligations hereinafter described, and any lien which may be imposed by the Court to secure the payment of any part of the purchase price under the Final Decree which is payable to dissenters. All securities (other than said equipment trust obligations) secured by lien on the Foreclosed Property and subject to which the Foreclosed Property was sold under the Decree will be acquired by the Applicant or cancelled on or before the Delivery Date.

"It is contemplated that the Applicant will acquire on the Delivery Date the Foreclosed Properties, subject only to the liens referred to in the next preceding paragraph, and the Seaboard-All Florida Properties and the bonds of GF&A, G&A Terminal and Tampa & Gulf Coast hereinabove described, all in consideration of (1) the issue of its securities as contemplated by the Plan (for authority for which the Applicant has applied in the Securities Application, to which reference is hereby made), (2) the assumption, as required by the Decree, of all debts, obligations and liabilities of the Receivers contracted, incurred or assumed by or chargeable against the Receivers up to May 31, 1945, to the extent not paid prior to the Delivery Date, or paid out of said reserve fund of $10,000,000, and (3) the obligation and liability of the Re-

ceivers, as guarantors, of the Equipment Trust
187 Certificates referred to in Item XXVII of the Amended Application.

"If less than all of the securities dealt with under the Plan are deposited thereunder, the Applicant may be required to make certain cash payments in respect thereof, but in that event either (a) such cash will be provided by sale of a part of the securities otherwise issuable in respect thereof under the Plan (assuming that market values continue at or near present levels) or (b) the
188 amounts of securities to be issued by the Applicant will be correspondingly reduced."

NINTH: Amend Item XXII of the Application at pages 20 and 30, inclusive, by eliminating from the "Lines to be Purchased" (p. 27) the lines of Georgia, Florida & Alabama Railroad Company (132.52), and adding said lines to the "Lines to be Leased," and by inserting on page 27, at the end of Subdivision A, the following:

189 "The lines of railroad shown above as owned by corporations other than Seaboard Air Line Railway Company, Seaboard-All Florida Railway, Florida Western & Northern Railroad Company and East and West Coast Railway are to be leased by Applicant pending the acquisition thereof.

TENTH: Amend Item XXVII of the Application, pages 32 to 34, inclusive, to read as follows:

"The outstanding Equipment Trust Certificates
190 subject to which the Foreclosed Property will be acquired by the Applicant, and which are to be assumed by the Applicant, are as set out in para-

graph 3 of the prayers of Applicant's Supplemental Application No. 1, in Finance Docket No. 14,- 161
500 (the Securities Application), to which reference is hereby made."

ELEVENTH: Applicant proposes to qualify to do business as a foreign corporation in North Carolina, Georgia, Alabama and Florida. The Constitution of South Carolina prohibits acquisition or operation by a foreign corporation of lines of railroad in South Carolina. It is not in the public interest that Applicant should be required to become a corporation of South Carolina, as well as of Virginia, and the requirement 162
referred to is a substantial burden on interstate commerce. Applicant is advised that it will have power to acquire and operate the property in South Carolina described in the Amended Application, irrespective of said provision of the Constitution of South Carolina, if such acquisition and operation shall be authorized by the Interstate Commerce Commission.

The laws of Georgia purport to limit the amount of real property in Georgia which may be owned by a foreign corporation. Such limitation, if applicable to 163
property used for railroad operation in interstate commerce, constitutes a burden on interstate commerce. Applicant is advised that it will have power to own such real estate in Georgia as may be useful in connection with the operation of the lines of railroad in Georgia described in the Amended Application, if the acquisition and operation of such lines of railroad is authorized by the Commission.

TWELFTH: In addition to the exhibits filed with, and introduced at the hearings on, the Application and the 164
Seaboard-All Florida Application, the following exhibits are filed herewith:

Exhibit A. A copy of the Purchase Agreement.
Exhibit B. Opinion of Leonard D. Adkins, Esq., counsel for the Applicant.

The resolution of the Board of Directors of Applicant, filed as Exhibit 1 to the Application, authorized the filing of this Supplemental Application and Amendment.

WHEREFORE, the Applicant respectfully requests that the Commission forthwith authorize the acquisition of properties, control, leasehold interests, trackage rights and rights of joint use as requested in the Application, as amended and supplemented, including, specifically, the acquisition and operation of lines of railroad in the State of South Carolina without becoming a domestic corporation of said state.

Dated January 23, 1946.

Respectfully submitted,

SEABOARD AIR LINE RAILROAD COMPANY,

By OTIS A. GLAZEBROOK, JR.

President

LEONARD D. ADKINS,

Counsel.

STATE OF NEW YORK,
COUNTY OF NEW YORK, } ss.:

OTIS A. GLAZEBROOK, JR., being duly sworn, deposes and says that he is the President of Seaboard Air Line Railroad Company; that he is the executive officer authorized by appropriate corporate action to sign, verify and file the above and foregoing application; that he is familiar with the subject matter thereof and that the statements made and the facts recited therein

are true to the best of his knowledge, information and belief.

OTIS A. GLAZEBROOK, JR.

Subscribed and sworn to before me this 26th day of January, 1946.

FREDERICK WEBER
Notary Public
[Notarial Seal]

FREDERICK WEBER.

Bronx Co. Clk's No. 26, Reg. No. 88-W-7; New York Co. Clk's No. 479, Reg. No. 229-W-7.

Term Expires March 30, 1947.

EXHIBIT A

AGREEMENT dated May 25, 1945, between OTIS A. GLAZEBROOK, JR., JOSEPH FRANCE and S. RALPH WARNKEN, as the Reorganization Committee under the Plan of Reorganization of Seaboard Air Line Railway (hereinafter called the Plan) and SEABOARD RAILWAY COMPANY, a corporation organized and existing under the laws of Virginia (hereinafter called the New Company).

By orders dated December 10, 1943, and December 14, 1943, respectively, the District Court of the United States for the Eastern District of Virginia (hereinafter called the Virginia Court) and the District Court of the United States for the Southern District of Florida (hereinafter called the Florida Court) approved a Plan for the reorganization of Seaboard Air Line Railwny Company, and, by orders dated, respectively, September 8, 1944, and September 9, 1944, the Virginia

Court and the Florida Court approved certain modifications of said Plan. The parties hereto are familiar with said Plan, which (as so modified) is hereinafter called the Plan. The Virginia Court and the Florida Court are hereinafter sometimes together called the Courts.

By said orders first hereinabove mentioned the Courts appointed Otis A. Glazebrook, Jr., Joseph France and Charles Markell as the Reorganization Committee to carry out the Plan. Said Charles Markell subsequently resigned as a member of the Reorganization Committee and S. Ralph Warnken was appointed by the Courts as his successor.

The Reorganization Committee duly called for deposits under the Plan of securities affected by the Plan. The Reorganization Committee also entered into agreements with certain committees representing certain issues of securities affected by the Plan whereby the securities deposited with such committees, unless withdrawn from deposit within a specified period, became subject to the Plan. There is annexed hereto as Schedule A a statement showing the principal amount of the outstanding securities of each issue entitled to receive new securities under the Plan and the principal amount of the securities of each such issue which have become subject to the Plan as of the close of business on May 19, 1945.

Of the issues specified in said Schedule A, the bonds of Carolina Central Railroad Company, the bonds of Florida Central & Peninsular Railroad Company and the notes of Seaboard Air Line Railway Company are hereinafter collectively sometimes called the Unforeclosed Bonds, the bonds of Georgia & Alabama Terminal Company and the bonds of Tampa & Gulf Coast

Railroad Company are hereinafter collectively sometimes called the Leased Line Bonds and the bonds of the remaining issues listed in Schedule A are hereinafter collectively sometimes called the Foreclosed Bonds. All securities now or hereafter subject to the Plan are hereinafter collectively sometimes called Deposited Bonds. 177

In addition to the bonds listed in Schedule A, the Reorganization Committee has acquired pursuant to the Plan $1,559,000, principal amount, of First Refunding Mortgage 6% Bonds of Georgia, Florida & Alabama Railroad or certificates of deposit therefor. Said bonds of Georgia, Florida & Alabama Railroad, including certificates of deposit therefor, are hereinafter sometimes called the G.F.&A. Bonds. 178

Pursuant to an agreement dated August 29, 1944, between the Receivers, the Reorganization Committee and the New Company (hereinafter called the All-Florida Agreement) the sale to the New Company of the properties referred to in the All-Florida Agreement (hereinafter called the All-Florida Properties) has been duly confirmed and the New Company has been authorized by the Interstate Commerce Commission to acquire the All-Florida Properties. Appeals are pending from the Decree pursuant to which the All-Florida Properties were sold and from the order confirming the sale thereof to the New Company. 179

The All-Florida Agreement provides, among other things, that if the New Company shall acquire the All-Florida Properties it will, upon the consummation of the Plan, subject to the approval of the Interstate Commerie Commission, issue in consideration of the conveyance to it of the All-Florida Properties such of the new securities contemplated by the Plan as may 180

be agreed upon between the New Company and the
181 Reorganization Committee, but that if the New Company shall acquire all or a major part of the properties which the Plan contemplates shall be acquired by it, it shall not be necessary to make any allocation of such new securities as between the All-Florida Properties and the other property acquired by the New Company.

On April 25, 1945, and April 21, 1945, respectively, there was filed in the Virginia Court and in the Florida Court a final decree of foreclosure and sale dated
182 April 12, 1945 (hereinafter called the Decree). The parties are familiar with the provisions of the Decree. The Decree provides for foreclosure of the mortgages securing the Foreclosed Bonds and for the sale of the property subject thereto, all as therein provided.

In consideration of the premises, and of the mutual covenants and agreements herein contained, and in pursuance of, and in order to carry out, the Plan, the parties hereto agree as follows:

FIRST: The Reorganization Committee will bid for
183 the Units to be offered for sale pursuant to the Decree the respective upset prices therefor specified in the Decree and such additional amount, if any, as the Reorganization Committee and the New Company may agree on. If the Reorganization Committee shall be the successful bidder for the major part or all of the property offered for sale it will use its best efforts to have said sale confirmed. If the Reorganization Committee shall not be the successful bidder at said sale for the major part of the property offered for sale, or
184 if any sale to the Reorganization Committee shall not be confirmed, this Agreement shall terminate without liability on the part of either party to the other. If the

Reorganization Committee shall be the successful bidder for the major part, but not for all, of the property offered for sale, this Agreement shall be appropriately modified.

The Reorganization Committee will bid for any property of Seaboard Air Line Railway Company (hereinafter called Seaboard) or its Receivers (hereinafter called the Receivers) which may be offered for sale at any sale pursuant to any supplemental or other decree which may hereafter be entered providing for the sale of such property. The amount to be bid by the Reorganization Committee at any such subsequent sale shall be fixed by agreement between the parties hereto.

SECOND: The New Company will use its best efforts to secure the approval of the Interstate Commerce Commission of the acquisition by it of the property to be acquired by it in accordance with this Agreement, of the operation by it of such of said property as consists of lines of railroads and appurtenances thereof and of the issue by it of securities as hereinafter provided.

THIRD: The New Company will promptly amend its charter so as to authorize the issue of stock by the New Company in accordance with the provisions of the Plan, and will use its best efforts to become qualified, so far as required by law, to own property and carry on its business in all of the states where the property to be acquired by the New Company pursuant to this Agreement is located.

The New Company will promptly take appropriate proceedings to change its name to "Seaboard Air Line Railway Company" or such other name as may be agreed upon by the parties hereto.

FOURTH: The Reorganization Committee will cause
189 all property for which it may be the successful bidder at any sale (except property which the Reorganization Committee, with the approval of the New Company, or the New Company, may elect not to take, as provided in the Decree, and except cash or temporary cash investments to the extent permitted by Article EIGHTH below), upon confirmation of the sale thereof, to be transferred to the New Company, in accordance with the provisions of the Decree.

Subject to the provisions of Article EIGHTH below;
190 the Reorganization Committee, as part of the consideration for the securities to be issued by the New Company pursuant to Article SEVENTH hereof, will (a) pay over to the New Company any amount which may be paid to the Reorganization Committee in cash in respect of any Deposited Bonds, either out of assets not sold pursuant to the Decree or out of the proceeds of sale of such assets if sold to someone other than the Reorganization Committee, except to the extent that any such amount may be distributed by the Reorganization Committee among the owners of the Deposited
191 Bonds, and/or (b) transfer to the New Company, on its written requests, all or any of the Deposited Bonds, stamped to show any amounts credited thereon in accordance with any provision hereof.

FIFTH: The Reorganization Committee will pay the purchase price of all property for which it may be the successful bidder in so far as such purchase price can be paid by the use of Deposited Bonds. The New Company will pay the balance of such purchase price as and when such purchase price is required to be paid
192 under the provisions of the Decree or of any subsequent order or orders of the Courts, or either of them,

and will assume all obligations and liabilities which under the provisions of the Decree or of any such subsequent order or orders are required to be assumed by the purchaser of such property and all other liabilities imposed on the purchaser of such property by the Decree or by any such subsequent order or orders.

The New Company will indemnify the Reorganization Committee and each of the members thereof from and against any and all liability in respect of such purchase price (except as hereinabove provided) and in respect of all such obligations and liabilities.

SIXTH: The Reorganization Committee will cause all Unforeclosed Bonds which are Deposited Bonds at the date of transfer to the New Company of the property offered for sale pursuant to the Decree (which date is hereinafter called the Delivery Date) to be surrendered for cancelation to the trustees under the respective mortgages or other indentures securing the Unforeclosed Bonds, or will make such other disposition thereof, if any, as the New Company may request; *provided, however,* that Notes of Seaboard included among the Deposited Bonds shall not be so delivered unless the trustee under the indenture securing such Notes shall deliver to the Reorganization Committee, in exchange for such Notes, pledged Consolidated Mortgage Bonds of Seaboard. If such delivery is made, the Consolidated Mortgage Bonds so delivered shall be deemed to be Deposited Bonds for all purposes of this Agreement. If such Consolidated Mortgage Bonds shall not be so delivered to the Reorganization Committee, the Reorganization Committee will deliver to the New Company on the Delivery Date all such Notes of Seaboard then included among the Deposited Bonds.

The Reorganization Committee will also deliver to
197 the New Company on the Delivery Date all Leased Line Bonds and all G.F.&A. Bonds then held by the Reorganization Committee or any proceeds of any thereof or substitutes for any thereof then in the hands of the Reorganization Committee.

SEVENTH: The New Company, subject to the approval of the Interstate Commerce Commission, will

(a) issue to the Reorganization Committee, or as it may direct, on the Delivery Date, the new securities issuable under the Plan in respect of all
198 Deposited Bonds, as of that date, and will thereafter from time to time so issue the new securities issuable under the Plan in respect of any additional securities which may become Deposited Bonds thereafter, up to the date when the Reorganization Committee, with the approval of the Courts, shall cease to receive deposits under the Plan;

(b) pay to or on the order of the Reorganization Committee, from time to time, the amount of cash necessary under the Plan to make the payments
199 required by the Plan to holders of Deposited Bonds entitled to receive cash under the Plan; and

(c) purchase, at $750 per $1,000 Bond, any G. F.&A. Bonds which may not be purchased by the Reorganization Committee before the Delivery Date, if the Reorganization Committee shall so request.

The new securities and the mortgages pursuant to which the new bonds are to be issued shall be in ac-
200 cordance with the Plan and shall otherwise be in form satisfactory to the Reorganization Committee. Said mortgages and the bonds to be issued thereunder shall

be dated such date (not earlier than January 1, 1944) as the Reorganization Committee may request.

The securities to be issued by the New Company pursuant to this Article SEVENTH shall be deemed to include the new securities to be issued by the New Company pursuant to the All-Florida Agreement.

EIGHTH: The Reorganization Committee may cause to be transferred to the Reorganization Committee, from time to time, out of the cash included in the property sold pursuant to the Decree, not exceeding $200,000 to provide for miscellaneous expenses of the Reorganization Committee between the date of sale pursuant to the Decree and the Delivery Date, which shall not otherwise have been provided for. Any portion of any amount so transferred to the Reorganization Committee which shall not be needed for the purpose aforesaid shall be paid over to the New Company promptly after the Delivery Date.

If the new bonds bear interest from a date later than January 1, 1944, the Reorganization Committee (a) may, with the approval of the Virginia Court, distribute, pursuant to Section VI of the Plan, all or any part of any cash which may be paid to the Reorganization Committee, in respect of Deposited Bonds, out of assets not sold pursuant to the Decree, or out of the proceeds of sale of any such assets, if sold to others than the Reorganization Committee, and (b) may, with the approval of the Virginia Court, cause to be transferred to the Reorganization Committee, for like distribution, cash and/or obligations of the United States, out of the assets sold pursuant to the Decree; *provided, however,* that unless the parties hereto shall otherwise agree, the amount retained pursuant to the foregoing subdivision (b) shall not exceed the amount

necessary, when added to the amount distributed, or
206 estimated to be available for distribution pursuant to the foregoing subdivision (a) to equal $500,000 for each calendar month or portion thereof which shall have elapsed between January 1, 1944, and the date from which the bonds to be issued by the New Company pursuant to the Plan shall bear interest.

If, at the Delivery Date (a) the amount which might be distributed in respect of Deposited Bonds out of assets not sold pursuant to the Decree cannot be definitely determined or (b) such assets are not in form
208 available for immediate distribution, and if the bonds to be issued by the New Company bear interest from a date later than January 1, 1944, the New Company will, at the request of the Reorganization Committee, subject to the approval of the Virginia Court, advance to the Reorganization Committee, for distribution on the Deposited Bonds, such amount as the Reorganization Committee may request, not exceeding the amount then estimated by the Reorganization Committee to be distributable in respect of Deposited Bonds out of assets not sold pursuant to the Decree.
209 Such advance shall not bear interest, and the Reorganization Committee shall be obligated to repay such advance only as and when, and to the extent that, the Reorganization Committee shall receive a distribution out of such assets in respect of Deposited Bonds.

NINTH: Unless the Virginia Court shall otherwise direct, the New Company will set aside in a reserve fund the same amount in cash and/or obligations of the United States as, at the Delivery Date, shall be
210 in the reserve fund created pursuant to Orders Nos. 362 and 394 of the Virginia Court. Such reserve fund shall be set aside for such purposes, if any, as may be

specified in any order of the Virginia Court entered prior to the Delivery Date or, in the absence of such specification, for such purposes as may from time to time be determined by the Board of Directors of the New Company.

TENTH: The New Company will pay or reimburse the Reorganization Committee for all taxes, Federal or state, for which either the New Company or the Reorganization Committee may be liable in respect of any transaction contemplated by this Agreement, and all other expenses in connection with carrying out the Plan and this Agreement, and will hold the Reorganization Committee harmless for any liability in connection with any such taxes or expenses; *provided, however* (1) that the New Company shall not be required to reimburse the Reorganization Committee for any expenses which shall have been provided for out of moneys paid to the Reorganization Committee by the Receivers or transferred to the Reorganization Committee pursuant to Article EIGHTH hereof and (2) except that as otherwise provided in the Decree (with respect to obligations of the purchaser under the Decree) the New Company shall not be liable for the compensation of the members of the Reorganization Committee or for the compensation of its counsel, it being understood that such compensation, in amounts to be approved by the Courts, will be paid out of the funds reserved for payment of expenses under the Decree.

ELEVENTH: All obligations of the New Company hereunder are subject to approval by the Interstate Commerce Commission of the performance of such obligations to the extent that such approval is required by law. In the event that the New Company shall be unable to obtain such approval this Agreement shall

terminate without liability of either party to the other hereunder.

Either party hereto, before carrying out any of its agreements herein contained, may petition the Virginia Court and/or the Florida Court for approval of the carrying out of such agreement and, in the event of any such petition, will use its best efforts to secure favorable action on such petition. In the event, however, that either the Virginia Court or the Florida Court shall refuse to grant any such petition or shall enter any order inconsistent with the performance by either party hereto of any of its agreements hereunder, this Agreement, so far as then unexecuted, shall terminate without liability of either party to the other hereunder.

TWELFTH: The Reorganization Committee is executing this Agreement solely in its capacity as Reorganization Committee under the Plan and no member of the Reorganization Committee shall incur any personal liability under this Agreement or in respect of any matter dealt with hereunder or any action taken pursuant hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement as of May 25, 1945.

OTIS A. GLAZEBROOK, JR. (L.S.)
JOSEPH FRANCE (L.S.)
S. RALPH WARNKEN (L.S.)
As the Reorganization Committee for Seaboard Air Line Railway Company

SEABOARD RAILWAY COMPANY
[Corporate Seal]
By OTIS A. GLAZEBROOK, JR.
President

Attest:
TRISTAN ANTELL
Secretary

SCHEDULE A

SECURITIES SUBJECT TO PLAN AS OF CLOSE OF BUSINESS MAY 19, 1945

I Unforeclosed Bonds

Title of Issue	*Principal Amount Outstanding*	*Principal Amount Subject to Plan*	*Percentage Subject to Plan*
Carolina Central Bonds	$ 3,000,000	$ 2,646,000	88%
F. C. & P. Bonds	*4,372,000	4,063,000	93%
Seaboard Notes	7,500,000*	6,722,000*	89%

II Foreclosed Bonds

Florida West Shore Bonds	755,000	697,000	92%
Georgia & Alabama Bonds	6,085,000	5,212,000	85%
G. C. & N. Bonds	5,360,000	4,989,000	93%
Atlanta-Birmingham B'ds	5,910,000	5,416,000	91%
Seaboard & Roanoke B'ds	2,500,000	2,447,000	97%
South Bound Bonds	2,033,000	1,750,000	86%
Seaboard First 4s	12,768,000	10,737,000	84%
Seaboard Refundings	19,350,000	15,750,000	81%
Seaboard Consolidateds	78,974,000†	67,164,500†	85%

III Leased Line Bonds

G. & A. Terminal	1,000,000	952,000	95%
Tampa & Gulf Coast	1,184,000	199,000	16%
Total	$150,791,000	$128,744,500	85%

EXHIBIT B

January 23, 1946

Dear Sirs:

I am counsel for Seaboard Air Line Railroad Company (hereinafter called the Applicant) and have supervised the organization of the Applicant and the proceedings taken by the Applicant to authorize the

* Disregarding partial payments made on account of principal.
† Includes bonds pledged with U. S. Treasury, but excludes bonds pledged to secure Seaboard Notes.

acquisition by the Applicant of the lines of railroad,
221 securities, leasehold interests, trackage rights and rights of joint use to be acquired by the Applicant, as stated in its Application, as amended and supplemented, under Section 5 of the Interstate Commerce Act, in Finance Docket No. 14,501.

I am of opinion that:

(1) the Applicant is a duly organized and existing corporation under the laws of the Commonwealth of Virginia and has the power to acquire
222 such properties; and

(2) the acquisition by the Applicant of such lines of railroad, securities, leasehold interests, trackage rights and rights of joint use will be legally authorized and valid if approved by the Interstate Commerce Commission.

Very truly yours,

LEONARD D. ADKINS.

223

Interstate Commerce Commission,
Washington 25, D. C.

224

In the Original Jurisdiction

INTERSTATE COMMERCE COMMISSION

EXHIBIT "B"

WASHINGTON June 28, 1946.

FINANCE DOCKET NO. 14500

Seaboard Air Line Railway Company Receivership

FINANCE DOCKET NO. 14501

FINANCE DOCKET NO. 14501 (Sub-No.1)

Seaboard Air Line Railroad Company Acquisition, Etc.

INDEX TO REPORT

INDEX—Continued

INDEX—Continued

INTERSTATE COMMERCE COMMISSION
FINANCE DOCKET NO. 14500 [1]

Seaboard Air Line Railway Company Receivership

Submitted June 6, 1946 *Decided June 28, 1946*

1. Purchase by the Seaboard Air Line Railroad Company of the railroad properties and other assets of the Seaboard Air Line Railway Company or its receivers, or both, and operation of such railroads, 235 including those operated under contract, lease, or agreement, and acquisition of control, or joint control, by the Seaboard Air Line Railroad Company through ownership of capital stock of certain other railroad companies, and joint control of the Baltimore Steam Packet Company, approved and authorized. Condition prescribed.

2. Acquisition by the Seaboard Air Line Railroad Company of an interest in the Baltimore Steam 236

[1] This report also embraces Finance Docket No. 14501 and Finance Docket No. 14501 (Sub No. 1) Seaboard Air Line Railroad Company Acquisition, etc.

Packet Company approved and authorized under
237 the Panama Canal Act. See 244 I.C.C. 583.

3. Acquisition of control of the above properties by Henry W. Anderson, Joseph France, Otis A. Glazebrook, Jr., Sam H. Husbands, and Legh R. Powell, Jr., voting trustees, approved and authorized. Condition prescribed.

4. The requirements of the constitution and statutes of the State of South Carolina in respect to railroads operating within that State found to be a burden on interstate commerce insofar as it re-
238 quires separate incorporation within that State.

5. Authority granted to the Seaboard Air Line Railroad Company, pursuant to a plan of reorganization, to issue not exceeding $32,500,000 of first-mortgage 50-year 4-percent bonds, series A, $52,500,000 of income-mortgage 70-year 4½-percent bonds, series A, $15,000,000 of preferred stock 5-percent, series A, of the par value of $100 a share, and 849,997 shares of common stock without par value, but with a stated value of $100 a
239 share, and such additional shares of common stock not exceeding 675,000 shares as may be necessary to comply with the conversion rights of the income-mortgage 70-year 4½-percent bonds, series A, and the preferred stock, series A, that may be issued under the plan.

6. Authority granted to the Seaboard Air Line Railroad Company, pursuant to a plan of reorganization, to assume obligations and liabilities under the terms and conditions and to the extent contem-
240 plated by the plan

(a) of Legh R. Powell, Jr., and Henry W. Anderson, as receivers of the Seaboard Air Line Railway

Company, as guarantors, in respect of not exceeding $13,588,000 of receivers' equipment-trust certificates; 241

(b) of the Seaboard Air Line Railway Company, or its receivers, or both, as guarantors or lessees, or both, in respect of the following securities: $323,333.33 of first-mortgage 4-percent bonds of the Birmingham Terminal Company, $100,000 of first and general mortgage 5-percent bonds, $2,400,000 of refunding and extension mortgage 5-percent bonds, series A, $1,100,000 of refunding and extension mortgage 6-percent 242
bonds, series B, and $400,000 of refunding and extension mortgage 4½-percent bonds, series C, all of the Jacksonville Terminal Company, $280,000 of 1½-percent serial promissory notes of the Norfolk & Portsmouth Belt Line Railroad Company, and $200,000 of first-mortgage 4-percent bonds of the Tampa Union Station Company; and

(c) of the Seaboard Air Line Railway Company, or the receivers, or both, as lessee by lease or op- 243
erating agreement, in respect of the following securities insofar as rental payments are involved: Athens Terminal Company first-mortgage 5-percent bonds, $200,000; Birmingham Terminal Company, 1500 shares of capital stock of the par value of $100 each; Durham Union Station Company, 333 shares of captial stock of the par value of $100 each, and $60,000 of first-mortgage 5-percent bonds; North Charleston Terminal Company, 1050 shares of the capital 244
stock of the par value of $100 each; Savannah Union Station Company, $600,000 of first mort-

gage 4-percent bonds; Tampa Union Station Company, 300 shares of capital stock of the par
345 value of $100 each; Atlanta Terminal Company, $1,600,000 of first-mortgage 4-percent bonds; and 1,500 shares of capital stock of the par value of $100 each.

Previous reports 257 I.C.C. 584, 683; 261 I.C.C. ———.

Leonard D. Adkins for Seaboard Air Line Railroad Company and interveners.

346 SECOND SUPPLEMENTAL REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS PORTER, MAHAFFIE, AND MILLER

BY DIVISION 4:

The Seaboard Air Line Railroad Company, hereinafter called the new company, under its former name of Seaboard Railway Company, applied on March 9, 1944, as amended and supplemented April 13, 1944, September 6, 1944, January 31, 1946, and April 5, 1946,
347 for authority under section 5(2) of the Interstate Commerce Act, as amended, to acquire certain properties and interest in properties of the Seaboard Air Line Railway Company, hereinafter called the old company, or its receivers or both, and for authority under section 5(2)(a), 5(15) and 5(16) of the act to acquire from the old company or the receivers or both, certain stock interests and indebtedness of the Baltimore Steam Packet Company, a common carrier by water, Finance Docket No. 14501. Henry W. Anderson,
348 Joseph France, Otis A. Glazebrook, Jr., Sam H. Husbands, and Legh R. Powell, Jr., as voting trustees un-

der a voting trust agreement, interveners, at the hearing applied on April 15, 1946, for authority under section 5(2) of the act to acquire control, to the extent such control is acquired under the provisions of the voting-trust agreement of the new company and of the other railroad corporations forming parts of the proposed Seaboard Air Line Railroad system, Finance Docket No. 14501 (Sub. No. 1). 249

Our report of August 12, 1944, in this proceeding, 257 I. C. C. 683, shows the details of all securities to be issued and obligations and liabilities to be assumed under the plan of reorganization. The new company proposes to assume these obligations, except that since such date the outstanding principal amount of Norfolk & Portsmouth Belt Line Railroad Company promissory notes has been reduced to $280,000, the outstanding principal amount of Tampa Union Station Company first-mortgage bonds has been reduced to $200,000, and the amount of Savannah Union Station Company first-mortgage bonds held in the sinking fund has increased to $304,000, Finance Docket No. 14500. 250

Hearings were held and briefs were filed by the new company and the interveners. No representations have been made by state authorities and no formal objection to the applications has been offered. 251

In furtherance of the disposition of these applications, we have issued several reports and orders on parts thereof, viz,—our order of April 14, 1944, in *Seaboard Air Line Ry. Co. Receivership*, 257 I.C.C. 837, authorized Otis A. Glazebrook, Jr., Joseph France, and Charles Markell, as members of the reorganization committee of the old company, to solicit the deposit of, or assent with respect to certain claims against the Seaboard Air Line Railway Company and 252

affiliated companies, and any instruments evidencing
253 the same under a deposit agreement, and to act for claimants pursuant to such agreement, subject to the conclusions specified therein. On September 30, 1944, in *Seaboard Ry. Co. Acquisition*, 257 I.C.C. 584, the purchase by the Seaboard Railway Company of the properties of the Seaboard-All Florida Lines was approved and authorized. On August 12, 1944, in *Seaboard Air Line Ry. Co. Receivership*, 257 I.C.C. 683, we tentatively approved the capitalization of the reorganized company as set forth in the plan of reorganization, suggesting changes in the terms of the bonds
254 and requiring mandatory provisions in respect of sinking-fund and capital-fund payments. No order was issued because of the preliminary character of the application. On February 21, 1946, in *Seaboard Air Line Ry. Co. Receivership*, 261 I.C.C. ——, authority was granted to the newly organized company to issue 3 shares of common capital stock without par value, to be sold at $100 a share to the reorganization committee to enable the new company to take the corporate action necessary to authorize the issue of the securi-
255 ties and to assume the obligations involved in the plan of reorganization, thus reducing to 849,997 the number of shares of common stock to be thereafter authorized to be issued.

In our report of August 12, 1944, *supra*, we discussed at some length the incorporation of the old company, the appointment of receivers and other matters. Since the issue of the report of August 12, 1944, *supra*, the reorganization committee has purchased at foreclosure sale for $52,000,500 the properties of the Sea-
256 board Air Line Railway Company, which are to be transferred to the new company. The sale was held on

May 31, 1945, the reorganization committee being the only bidder, and on June 29, 1945, the sale was confirmed and made absolute. The price bid was $500.00 in excess of the upset price. The new company has also purchased at foreclosure sale the properties of the Seaboard-All Florida Railway, Florida Western & Northern Railway Company, and East and West Coast Railway pursuant to authority granted by our order of September 30, 1944, *supra*, and these will be transferred to the new company upon the consummation of the plan. This sale was confirmed on October 2, 1945, by the District Court of the United States for the Southern District of Florida. All appeals from the orders authorizing and confirming the sale of the properties to the new company have been finally disposed of.

By the terms of the decrees the foreclosed properties comprise (1) all properties of every kind, character, and description of the old company on hand at May 31, 1945, other than the right of the old company to exist as a corporation and a reserve of cash or temporary cash investments in the amount of $10,000,000 plus an amount equal to the current liabilities of Legh R. Powell, Jr., and Henry W. Anderson as receivers of the old company as of May 31, 1945, for the payment of such costs, expenses, allowances, compensation and disbursements as the courts shall hereafter find to be properly chargeable against the receivership estate, the liabilities of the receivers for Federal income and excess profit taxes up to May 31, 1945, and all expenses made and liabilities incurred by the receivers in the discharge of their duties up to May 31, 1945, (2) all right, title and interest of the receivers and the old company in all improvements made by the

receivers between May 31, 1945, and the date of delivery to the new company of deeds to the foreclosed
261 properties and to the leased lines now operated by the receivers, and (3) all additional real property, railroad equipment or other assets, other than current assets, acquired by the receivers between May 31, 1945, and the date of delivery to the new company, for use in connection with the operation of such properties.

Pursuant to the terms of an agreement dated May 25, 1945, between Otis A. Glazebrook, Jr., Joseph France and S. Ralph Warnken, as reorganization com-
262 mittee, and the Seaboard Railway Company (now Seaboard Air Line Railroad Company), the committee will pay the purchase price of all the property acquired by it insofar as possible by the use of deposited bonds and transfer the property to the new company. The new company will pay the balance of the purchase price as and when required pursuant to the order of the courts, and will assume all other liabilities imposed upon the purchaser of the property. As consideration for the transfer of the property the new com-
263 pany (1) will issue the various securities as hereinafter set forth to the reorganization committee for distribution pursuant to the terms of the plan in respect to all deposited bonds, (2) will pay to or on the order of the reorganization committee from time to time the amount of cash necessary to make the payments to holders of deposited bonds entitled to receive cash under the plan, and (3) will purchase at $750 per $1,000 bond any Gulf, Florida & Alabama bonds which may not be purchased by the reorganization committee before the delivery date if so requested by the com-
264 mittee.

A statement shown as appendix B sets forth the principal amount of outstanding securities of each issue entitled to receive new securities under the plan, and the principal amount of the securities of each such issue which became subject to the plan as of the close of business May 19, 1945. In addition to the bonds shown therein, the reorganization committee has acquired pursuant to the plan $1,559,000 of first refunding mortgage 6-percent bonds of Georgia, Florida & Alabama Railroad, or certificates of deposit therefor. 265

The new company was incorporated for the purpose of acquiring, directly or indirectly, substantially all of the system of railroads of the old company. Under the plan it is proposed to include in a unified railroad system (a) all the properties heretofore owned outright by the old company, (b) all the wholly owned subsidiaries operated by the receivers of the old company, (c) subsidiaries partly owned but with some outstanding debt or stock held by the public, and (d) leased lines. These properties were subject, in whole or in part, to 18 separate mortgages securing outstanding bonds. The proposed plan contemplates a single new system subject to new consolidated system mortgages and the elimination of all prior liens. It is also proposed to acquire all stocks, obligations, securities, or other interests in other companies or separately operated property held by the old company or its receivers at the time the plan is effective, to the extent described below. A summary of the properties to be acquired is as follows: 266 267

Formerly owned lines of old company and subsidiaries.—The lines of railroad formerly owned by the old company and by its subsidiaries Seaboard-All Florida Railway, Florida Western & Northern Rail- 268

road Company and East and West Coast Railway
269 (known as the Seaboard-All Florida Lines), a total of approximately 3,670 miles of first main track. The Seaboard-All Florida Lines, approximately 394 miles, have been acquired by the new company pursuant to our authorization of September 30, 1944, in *Seaboard Ry. Co. Acquisition, supra.*

Lines operated under lease by receivers.—All outstanding securities of the following subsidiaries of the old company whose properties (except for certain separately operated properties of Tampa Northern Railroad Company) are operated under lease by the re-
270 ceivers: Brooksville and Inverness Railway, Charlotte Harbor & Northern Railway Company, Prince George and Chesterfield Railway, and Tampa Northern Railroad Company. The lines of railroad owned by the above-named corporations (a total of approximately 184 miles of main and branch lines) may be acquired by the new company, either before or after the consummation of the reorganization.

Corporations' securities deposited under reorganization plan.—All outstanding stock and all bonds de-
271 posited under the reorganization plan of the following corporations: Georgia and Alabama Terminal Company and Tampa & Gulf Coast Railroad Company. The properties of said corporations, which embrace 70.52 miles and 2.42 miles of railroad, respectively, may be acquired by the new company either before or after the consummation of the reorganization. In each case more than 90 percent of the outstanding bonds have been deposited under the reorganization plan. The properties of said corporations, pending their ac-
272 quisition, will be leased to the new company under the leases hereinafter described.

Georgia, Florida & Alabama Railroad Company securities.—Ten thousand shares of common stock without par value of Georgia, Florida & Alabama Railroad Company and not less than $1,575,000, principal amount, first-mortgage and refunding 6-percent bonds of Georgia, Florida & Alabama Railroad Company. Georgia, Florida & Alabama Railroad Company is in process of reorganization under section 77 of the Bankruptcy Act and the new company expects to acquire such securities of Georgia, Florida & Alabama Railroad Company as may be issued in the reorganization of Georgia, Florida & Alabama Railroad Company in respect of said bonds. It is not expected that any securities will be issued in respect of said common stock. The District Court of the United States for the Middle District of Georgia has authorized the operation of the properties of Georgia, Florida & Alabama Railroad Company, about 133 miles, by the new company pending the reorganization of that company on such terms as hereafter may be approved by us in that proceeding. Our authorization herein is upon the understanding that the new company will take such steps as are necessary to initiate proceedings in that regard. It is contemplated that the new company will continue to operate said properties after the reorganization of Georgia, Florida & Alabama Railroad Company on such basis as may be approved as part of the reorganization plan of that company.

Separately operated lines.—Control through ownership of the following shares of capital stock of the following railroads, such shares now being owned by the old company or held for the benefit of the receivership estate of the old company by its receivers: Macon, Dublin & Savannah Railroad Company, 17,500 shares

of common stock, 100 percent control; Tavares and Gulf Railroad Company 2,982 shares of common stock, 100 percent control. Said companies operate about 126 miles of railroad.

Line owning principally equipment.—The new company will acquire the assets of the Seaboard-Bay Line Company, which consist principally of equipment and equipment-trust obligations assumed by the old company. All of the equipment is leased to the old company by agreement dated November 1, 1923, and supplements thereto. The lease has not been affirmed or disaffirmed by the receivers of the old company, but the equipment has been used by the receivers, pursuant to court orders.

Water-carrier company securities.—The new company proposes to acquire all of the funded debt, consisting of $1,500,000, principal amount of debentures, due January 1, 1991, and 50 percent of the capital stock, represented by 200 shares of common stock of the par value of $1,000 a share, of the Baltimore Steam Packet Company. In *Baltimore Steam Packet Co. Acquisition and Control*, 244 I.C.C. 583, we authorized the receivers of the old company, and other carriers to acquire control of the Baltimore Company through stock ownership. The remaining 50 percent of the stock of that company is owned by the Chesapeake Steamship Company of Baltimore City, the capital stock of which is owned by the Southern Railway Company and the Atlantic Coast Line Railroad Company. We also approved and authorized under section 5(14)-(16) of the act, referred to as the Panama Canal Act, continuance by the receivers, and the carriers mentioned, of their proceedings in the Baltimore Company. Inasmuch as the proceeding now under consid-

intricate

eration involves only the transfer of the interests of the receivers to the new company, it is obvious that such acquisition will not prevent the Baltimore Company from being operated in the interest of the public and with advantage to the convenience and commerce of the people, and operation thereof will not exclude, prevent, or reduce competition on the routes by water considered in that case. Accordingly such acquisition is approved and authorized. 281

Joint control of other carriers.—The new company will also acquire joint control with other carriers of the following railroad, express, or terminal companies, through ownership of the shares of stock of each to the extent shown: Albany Passenger Terminal, 55 shares, $100 par, 4.58 percent; Athens Terminal Company, 125 shares, $100 par, 50 percent; Birmingham Terminal Company, 250 shares, $100 par, 16 2/3 percent; Chatham Terminal Company, 250 shares, $100 par, 50 percent; Columbia, Newberry and Laurens R. Co., 3,335 shares, $25 par, 16.675 percent; Durham Union Station Co., 83 1/3 shares, $100 par, 25 percent; Fruit Growers Express Co., 11,854 shares, $100 par, 12.82 percent; Jacksonville Terminal Co., 938 shares, $100 par, 25 percent; Norfolk & Portsmouth Belt Line R. Co., 72 shares, $100 par, 12 1/2 percent; North Charleston Terminal Co., 350 shares, $100 par, 33 1/3 percent; Railway Express Agency, Inc., 17 shares, no par, 1.7 percent; Richmond-Washington Co., 6,675 shares, $100 par, 16 2/3 percent; Savannah Union Station Co., 1,000 shares, $100 par, 33 1/3 percent; Tampa Union Station Co., 200 shares, $100 par, 66 2/3 percent; and The Wilmington Railway Bridge Co., 200 shares, $100 par, 50 percent. 282 283 284

Leasehold interests.—The new company will acquire
285 the leasehold interests of the old company or its receivers in the properties of the following lessors, except to the extent that the properties of such lessors may hereafter be acquired by the receivers or the new company (other than those marked with an asterisk, whose properties are not to be acquired).

Brooksville and Inverness Railway. Lease of January 5, 1926, as supplemented October 1, 1928, to old company, 19.02 miles.

Charlotte Harbor & Northern Ry. Co. Lease of March 1, 1928, as supplemented July 23, 1928, to old
286 company, 100.45 miles.

Prince George and Chesterfield Railway. Lease of January 16, 1930, to old company, 15.69 miles.

Tampa Northern Railroad Company. Lease of January 5, 1926, as supplemented October 1, 1928, to old company, 49.47 miles.

*Central of Georgia Railway Company. Lease of March 28, 1896, to Georgia and Alabama Railway, conveyed by latter to a predecessor in title to old company under date of February 20, 1902, subject to mod-
287 ification or the execution of a new lease pursuant to negotiations between the receivers and the Central of Georgia trustee, 57.48 miles between Meldrim and Lyons, Ga.

*Georgia Power Company (Columbus Railroad Company, predecessor). Lease of October 31, 1901, between predecessor company and predecessor of old company and supplements thereto, 2.35 miles.

*McRae Terminal Company. Lease of December 31, 1909, as supplemented August 17, 1914, and November
288 22, 1924, between terminal company and a predecessor of old company, 1.81 miles switching tracks.

The new company will lease and operate the properties of Georgia and Alabama Terminal Company and Tampa & Gulf Coast Railroad Company under leases which provide that the new company shall retain all revenues received from the property, pay all taxes, all the costs of operation and shall save the owner harmless from all claims that arise from operation of the properties.

Trackage rights and joint use of facilities.—The new company will also acquire the rights now vested in the old company or its receivers to trackage over, or joint use of, lines of railroad and terminals owned or operated by the following railroads and terminal companies, a total of about 33 miles of main lines, except to the extent that the agreements creating such trackage rights or rights of joint use may hereafter be disaffirmed by the receivers or the new company.

Joint Yard, Savannah, Ga. Agreement of May 1, 1916, between Central of Georgia Railway Co., the old company, and the Chatham Terminal Company.

Milton to Navassa, N. C. Agreement of November 8, 1866, as supplemented May 22, 1909, and May 25, 1926, between the Atlantic Coast Line Railroad Co., or its predecessors, and the old company, or its predecessors or receivers of the old company, covering operations of properties of Wilmington Railway Bridge Co.

River Junction, Fla. Agreement dated February 28, 1908, between the Atlantic Coast Line Railroad Company, Louisville & Nashville Railroad Company, predecessor of old company, or its receivers, and the receiver of the Appalachicola Northern Railroad.

Savannah, Ga. Agreement dated May 1, 1902, amended March 1, 1920, between Savannah Union Station Company, Southern Railway Company, Atlantic

Coast Line Railroad Company, and the old company.

293 Athens, Ga. Operating agreement, dated February 19, 1943, between the Athens Terminal Company, the receivers, and the Gainesville Midland Railroad Company.

Atlanta, Ga. Agreement dated August 19, 1916, between Atlanta Terminal Station Company, the old company, the Southern Railway Company, Central of Georgia Railway Company, Atlanta & West Point Railroad Company, Atlanta, Birmingham & Atlantic Railway Company; and Guaranty Trust Company of New York.

294 Howells, Ga., to freight depot, Atlanta, Ga. Contract dated November 14, 1930, between The Nashville, Chattanooga & St. Louis Railway, Western & Atlantic Railroad, and the old company.

Howells, Ga., to Terminal station, Atlanta, Ga. Agreement dated August 11, 1916, as supplemented July 7, 1921, between Southern Railway Company and the old company (further supplemented by agreement dated June 1, 1936, between the receivers and the Southern Railway Company), and agreement dated 295 March 31, 1928, between Southern Railway Company, the old company and Central of Georgia Railway Company.

Birmingham, Ala. Agreement of April 12, 1917, between the Southern Railway Company, the Alabama Great Southern Railroad Company, Central of Georgia Railway Company, Illinois Central Railroad Company, and the old company; as supplemented by agreement dated November 7, 1936, between Southern Railway Company and the receivers.

296 Birmingham, Ala. Agreement dated March 1, 1907, as supplemented May 18, 1907, and March 29, 1915, be-

tween Birmingham Terminal Company, Southern Railway Company, Illinois Central Railroad Company, a predecessor of old company, Central of Georgia Railway Company, St. Louis & San Francisco Railroad Company, Alabama Great Southern Railroad Company, and The Equitable Trust Company of New York.

Birmingham, Ala. Agreement dated February 12, 1903, as supplemented August 22, 1904, January 31, 1908, and February 1, 1912, between Birmingham Belt Railroad Company and certain predecessors in title of the old company, as amended by agreement dated January 26, 1940, between the receivers and the Birmingham Belt Railroad Company, trustees of St. Louis-San Franciso Railway Company, receivers of Central of Georgia Railway, and Illinois Central Railroad Company.

Birmingham (freight yard junction) to Bessemer, Ala. Agreement dated February 12, 1903, as supplemented June 1, 1905, between Kansas City, Memphis & Birmingham Railroad Company and predecessors in title of Seaboard Air Line Railway, a predecessor of old company.

Montgomery, Ala. Agreement dated November 20, 1899, between Central of Georgia Railway Company and Georgia and Alabama Railway, predecessor of the old company.

Montgomery, Ala. Agreement effective on and after May 1, 1898, between Louisville & Nashville Railroad Company and Georgia & Alabama Railway, a predecessor in title of the old company, covering use of union passenger station facilities.

Jacksonville, Fla. Agreement dated June 1, 1917, between Jacksonville Terminal Company, Atlantic Coast

Line Railroad Company, Florida East Coast Railway
301 Company, the old company, Southern Railway Company, and United States Trust Co. of New York (as supplemented by agreement also dated June 1, 1917, between the aforesaid parties and Georgia, Southern and Florida Railway Company and as further supplemented by agreement dated October 1, 1921, between the parties first enumerated above); also agreement dated April 4, 1939, between Jacksonville Terminal Company, Atlantic Coast Line Railroad Company, the receivers of Florida East Coast Railway, receivers of the old company, Southern Railway Company, and the
302 United States Trust Company of New York.

Tampa, Fla. Agreement dated November 1, 1940, between Tampa Union Station Company, the receivers, and Atlantic Coast Line Railroad Company.

Raleigh to Cary, N. C. Agreement dated January 5, 1915, as supplemented January 1, 1926, between Southern Railway Company and the old company, or a predecessor in title.

Miscellaneous tracks, 3.39 miles of miscellaneous passing, switching, and other tracks owned by other
303 railroads over which the old company has trackage rights.

Consideration for acquisition of properties.—To acquire the properties and rights above described the new company proposes to pay cash, as stated below, and to issue securities and assume obligations and liabilities as follows:

Securities issues.—It is proposed to issue a maximum amount of the following securities: $32,500,000 of first-mortgage 50-year 4-percent bonds, series A;
304 $52,500,000 of income-mortgage 70-year 4 1/2-pergent bonds, series A; $15,000,000 of preferred stock 5 per-

cent, series A, par value $100; 849,997 shares of common stock without par value but with stated value of $100 a share; and an additional amount not exceeding 675,000 shares of common stock, or such part thereof as may be necessary to comply with the conversion rights of the income-mortgage 4 1/2-percent bonds, series A, and preferred stock, series A, as may be issued under the plan.

Assumption of obligation and liability.—(a) *Receivers' obligations.*—Pursuant to the plan it is proposed to assume obligation and liability of the receivers of the old company, as guarantors, in respect of not exceeding $13,588,000 of receivers equipment-trust certificates.

(b) *Obligations of receivers or old company, or both, as guarantors and lessees, in respect of the following securities.*—One million nine hundred and forty thousand dollars ($1,940,000) of Birmingham Terminal Company first-mortgage 4-percent bonds, due March 1, 1957, guaranteed severally by six companies, old company's portion $323,333.33; the following securities of Jacksonville Terminal Company, all guaranteed jointly and severally; $100,000 first and general mortgage 5-percent bonds, due July 1, 1967, $2,400,000 refunding and extension mortgage 5-percent bonds, series A, due July 1, 1967, $1,100,000 refunding and extension mortgage 6-percent bonds, series B, due July 1, 1967, and $400,000 refunding and extension mortgage 4 1/2-percent bonds, series C, due July 1, 1967; and $200,000 first-mortgage 4-percent bonds of Tampa Union Station Company, due October 1, 1958, guaranteed jointly and severally.

(c) *Obligations of receivers or old company, or both, as guarantors, in respect of the following securi-*

ties.—Two hundred and eighty thousand dollars
308 ($280,000) of Norfolk and Portsmouth Belt Line Railroad Company 1 1/2-percent serial promissory notes, due in annual installments of $70,000 each in September 1 in each year to and including September 1 1949, guaranteed jointly and severally.

(d) *Obligations of receivers or old company, or both, as lessee,* (by lease or operating agreement) in respect of the following securities, to the extent that the old company, or its receivers, or both, are obligated to pay as rent an amount equivalent to interest,
310 dividends, or sinking-fund installments on these securities, and without creating or retaining any other obligation or liability of the old company or its receivers, or either, in respect of the principal of, or the interest or dividends or sinking-fund installments on these securities:

Athens-Terminal Company.—Two hundred thousand dollars ($200,000) of first-mortgage 5-percent bonds. Operating agreement dated February 19, 1943, between that company, the receivers of the old com-
311 pany and the Gainesville Midland Railroad Company.

Birmingham Terminal Company.—One thousand five hundred shares of capital stock, $100 par value, owned in equal amounts by six lessee companies. Agreement dated March 1, 1907, as supplemented May 18, 1907, and March 29, 1915.

Durham Union Station Company.—Sixty thousand dollars ($60,000) of first-mortgage 5-percent bonds, due May 1, 1955. Agreement dated May 1, 1905, as amended December 10, 1907, between that company
312 and 4 lessees, 1 the old company's predecessor. Also 333 shares of capital stock, par value $100 a share.

Agreement of May 1, 1905, as above. Old company's portion 83 1/3 shares.

North Charleston Terminal Company.—One thousand and fifty shares of capital stock, par value $100 a share. Owned in equal amounts by three lessees, one the old company. Agreement dated December 20, 1916, between lessor and lessees.

Savannah Union Station Company.—Six hundred thousand dollars ($600,000) of first-mortgage 4-percent bonds, due April 1, 1952 (includes $304,000 of bonds reacquired and held alive in sinking fund as of January 1, 1946). Agreement dated May 1, 1902, amended March 1, 1920, between station company and three lessees, one the old company's predecessor.

Tampa Union Station Company.—Three hundred shares capital stock $100 par value, owned in equal amounts by three companies, including old company and one of its wholly owned subsidiaries, Tampa Northern Railroad Company.

Agreement dated November 1, 1940, between station company and two lessees, receivers of old company and the Atlantic Coast Line Railroad Company.

Atlanta Terminal Company.—One million six hundred thousand dollars ($1,600,000) of first-mortgage 4-percent bonds, due August 1, 1969. Agreement dated August 19, 1916, between terminal company and five lessees, one of which is the old company.

The old company pays its user proportion of interest on total issues of $1,600,000 of bonds, but does not contribute to the sinking fund for redemption of these bonds, funds for which are provided in equal proportions by the three stockholders. Certain of these bonds have been redeemed and are held alive in sinking fund, but the bonds continue to bear interest. Also

1,500 shares of capital stock, $100 par, owned in equal
317 amounts by Southern Railway Company, Central of Georgia Railway Company, and Atlanta and West Point Railroad Company.

The following securities are to be dealt with in the plan:

(1) *Obligations of receivers.*—A total amount of $13,588,000 of receivers' equipment-trust certificates will be assumed by the new company.

(2) *Seaboard underlying divisional mortgage bonds.*—A total amount of $51,575,262.67, consisting of $30,-
318 015,000 of principal and $21,560,262.67 of interest (as of March 31, 1946), will be settled by the payment of $2,339,500 of cash and issues of $41,493,169 of various securities.

(3) *Seaboard general-mortgage bonds.*—A total of $211,507,839.68, consisting of $94,115,500 of principal and $117,392,339.68 of interest (as of March 31, 1946), will be settled by the payment of $5,551,200 of cash and the issue of $113,617,192 of various securities.

(4) *Seaboard collateral-trust obligations.*—A total
319 of $42,385,599.73, consisting of $21,316,402 of principal and $21,069,197.73 of interest (as of March 31, 1946), will be settled by the payment of $1,316,700 of cash and the issue of $27,275,612 of various securities.

(5) *Subsidiary railroad and terminal companies, properties of which are operated by receivers as part of the system.*—A total of $4,453,200, consisting of $2,184,000 of principal and $2,269,200 of interest (as of March 31, 1946), to be settled by the payment of $118,800 cash and the issue of $2,454,179 of various
320 securities.

(6) *The Seaboard-Bay Line Co. section 210 loan-deficiency claim.*— A total indebtedness of $395,375.92

(as of March 31, 1946), which is to be settled by the payment of $8,100 cash and the issue of $159,848 of various securities.

(7) The new company has paid $1,720,669.89 in cash (the money being advanced by the receivers) on account of the purchase price of the Seaboard-All Florida Lines. The balance of the purchase price of said property has been paid by the use of bonds and other obligations owned by the receivers.

By orders of the District Court of the United States for the Eastern District of Virginia, and the District Court of the United States for the Southern District of Florida, dated respectively, September 8 and 9, 1944, the plan was modified in accordance with the requirements of our report of August 12, 1944, *supra*, and the securities described below are in accordance therewith.

A description of the new securities to be issued is given below:

First-mortgage bonds.—$32,500,000 of first-mortgage 50-year 4-percent bonds, series A, will be issued under and pursuant to, and will be secured by the Seaboard's first mortgage dated January 1, 1946, to be made to the Mercantile Trust Company of Baltimore and Nelson H. Stritehoff, as trustees, and will be issued forthwith upon the execution of the mortgage. The mortgage authorizes the issue of bonds in series, those of series other than A to be determined as to amount and provisions by the board of directors and specified in a supplemental indenture. The authorized aggregate principal amount of bonds will be unlimited. The series A bonds in coupon form will be dated January 1, 1946, and the registered bonds as of the interest-payment date last preceding the date of au-

thentication, including January 1, 1946, as an interest-
325 payment date, or if the date of authentication be an
interest-payment date, as of that date; will bear
interest at the rate of 4 percent per annum, payable
on January 1 and July 1 in each year beginning July
1, 1946; and will be payable both as to principal and
interest in such coin or currency of the United States
as at the time of payment is legal tender for the pay-
ment of public and private debts. They will be issu-
able in coupon form in denominations of $100, $500,
and $1,000, and as registered bonds without coupons in
326 denominations of $1,000, $5,000, and $10,000, and any
other denominations which may from time to time be
authorized by the board of directors. The series A
coupon bonds and registered bonds without coupons
will be interchangeable in denominations of $1,000 or
more. The series A bonds will mature January 1, 1996.
They will be redeemable at the option of the company
at any time as a whole or in part upon payment of the
principal amount with all unpaid interest accrued to
the redemption date. Under the sinking fund to be
327 provided the company will pay to the corporate trus-
tee in cash for the series A sinking fund on or before
May 1 in each calendar year, beginning in 1947, and
continuing so long as any series A bonds are outstand-
ing, to the extent that available net income for the
preceding calendar year applicable to the series A
sinking fund is sufficient for the purpose, an amount
equal to 1 percent of the maximum principal amount
of series A bonds at any one time outstanding, plus
any amount, not previously made up, by which avail-
328 able net income for any previous year or years has
been insufficient for the entire payment to the series
A sinking fund for such year or years. Each payment

into this sinking fund will be applied to the retirement of series A bonds by purchase, payment or redemption at the redemption price, or cost to the company exclusive of interest. If, on the last day of February in any year after 1947, there remains in the series A sinking fund $50,000 or more, the trustee will apply the amount then in the series A sinking fund to the redemption of bonds of series A on the next succeeding May 1. Moneys in the series A sinking fund may at any time be applied to the redemption of series A bonds if the company so elects. Bonds purchased or redeemed by the operation of the series A sinking fund will be canceled and no bonds will be issued to refund the bonds so purchased or redeemed. Any amounts payable into any sinking fund for any series of bonds other than series A will be applied as provided in the supplemental indenture creating such series.

So long as any bonds remain outstanding, available net income, computed on a calendar year basis, will be determined for each year beginning with 1946. So long as securities may be exhanged under the plan of reorganization, available net income will be computed as if all new securities issuable under the plan had been issued as of January 1, 1946. For the purpose of computing available net income for the year 1946, the income after fixed charges for any period between January 1, 1946, and the date of delivery of the properties will be deemed to be the income available for fixed charges reported for that period by the receivers of the property of the old company less the sum of (a) interest for that period on all debt of the receivers assumed by the new company and rent paid for leased road and equipment except under leases from a subsidiary, and (b) interest for that period on all series

A bonds. Available net income for any year will be
883 the sum of (a) the income (or deficit) after fixed charges for such year and (b) the net income (or deficit) for such year of all 90-percent subsidiaries whose properties are not operated by the company, under lease or otherwise, after deducting any dividends paid in cash in such year on stock of any such 90-percent subsidiary not owned by the new company or by a subsidiary and adjusting the results as set forth in the mortgage.

Available net income will be applied as follows: At
884 its determination, a credit will be made to a memorandum account designated as the capital fund account in an amount equal to the greater of either $1,625,000, or 3 1/4 percent of the railway operating revenues of the new company and its 90-percent subsidiaries for such year, less the depreciation credit for such year, plus any amount by which available net income for any previous year or years shall have been insufficient for the maximum permissible appropriations. Any remaining net income will be applied to the payment on
885 the next May 1 of the installment of the sinking fund for series A bonds, and income remaining thereafter to sinking-fund requirements of bonds of series other than series A. Any remaining income is to be applied to sinking-fund requirements of any outstanding emergency bonds, and any remaining income to the payment of interest on then outstanding income bonds in accordance with the provisions of the general mortgage, after which the sinking-fund requirements of those bonds will be paid. Any remaining net income is
886 to be applied as provided in section 7 and in subparagraph (b) of section 6, of article six of the mortgage,

after which any remaining income may be applied to the proper corporate purposes of the new company.

If, on any July 1, the unappropriated balance in the capital-fund account exceeds $2,500,000, the new company is to dispose of it by transferring such excess, in whole or in part, to any sinking fund then in effect for first-mortgage bonds or income bonds of any series, or by paying such excess, in whole or in part, to the general-mortgage corporate trustee, or if no income bonds are outstanding, to the corporate trustee of the first mortgage to be held as a special capital fund until disposed of as provided in the general mortgage or in the first mortgage.

By concurrent action of the new company and of the bearers or registered owners of not less than 66 2/3 percent in aggregate principal amount of the outstanding series A bonds the time of payment of any interest installment on the series A bonds may be postponed to a fixed date but not later than January 1, 1996, but the number of such postponed semiannual installments may not exceed 10. The indenture may be modified to the extent specified by the same course of action.

General-mortgage bonds.—These bonds will be issued under and pursuant to and will be secured by an indenture, dated January 1, 1946, to be made to the Guaranty Trust Company of New York and Arthur E. Burke as trustees. The authorized aggregate amount of bonds issuable thereunder will be unlimited. The series A bonds will be designated as to the company's general-mortgage 4 1/2-percent income bonds, series A. Bonds of other series will be issuable as from time to time authorized by the board of directors of the company. Each series will be distinguished

by a serial letter or otherwise, and the coupon bonds
341 and the registered bonds without coupons (if any), and the several denominations of each will be distinguished by appropriate letters and numbers.

Series A bonds in the amount of $52,500,000 will be dated as of the date of their authentication, but, if so requested, may be dated January 1, 1946, will bear interest at the rate of 4 1/2 percent per annum, payable on May 1 after the date thereof, but not earlier than May 1, 1947, to and including May 1, 2015, and on January 1, 2016, and will mature January 1,
342 2016. They will be payable as to principal and interest in such coin or currency of the United States as at the time of payment may be legal tender for the payment of public and private debts; will be redeemable before maturity at the option of the company as a whole or in part at any time. They will be issuable in the form of registered bonds without coupons in the denominations of $100, $500, $1,000, $5,000, and $10,000, and any other denominations which may be authorized by the board of directors, and the several
343 denominations of the series A bonds will be interchangeable, but no series A bonds of less than $1,000 denomination may be exchanged.

Pending the preparation of the definitive bonds of any series, the new company may execute and upon its request, the corporate trustee will authenticate and deliver temporary bonds in any denomination substantially of the tenor of the definitive bonds in lieu of which they are issued, in bearer or registered form, with or without coupons, and with such variations as may be appropriate.

344 Provision is made for the issue of additional income bonds of any series for the purposes and under the

conditions specified in the general mortgage. However, as the issue of additional bonds is not now contemplated, it is unnecessary to consider these provisions herein.

Series A bonds will be redeemable in whole or in part at any time upon due notice, upon payment of the principal amount of series A bonds to be redeemed, plus an amount equal to the sum of (1) interest at the rate of 4 1/2 percent of the principal thereof from January 1 of the preceding calendar year (or January 1, 1946, whichever is later) to the redemption date; (2) any unpaid earned interest as of January 1 of such preceding calendar year, and (3) all accumulated unpaid interest as of January 1 of such preceding calendar year, to the extent that the amounts specified above shall not have been paid prior to the redemption date.

The redemption provisions of any series of bonds other than series A may be prescribed by the board of directors prior to their issue and set out in a supplemental indenture.

A sinking fund will be provided for the series A bonds into which will be paid in cash on or before May 1 in each calendar year so long as any series A bonds are outstanding to the extent that available net income for the preceding calendar year is sufficient, an amount equal to one-half of 1 percent of the maximum principal amount of series A bonds at any time outstanding, plus any amount by which available net income for any previous year or years shall have been insufficient for the entire payment of the series A sinking fund for such year or years. All payments into the series A sinking fund will be applied to the retirement of series A bonds by purchase, payment,

or redemption, at not exceeding the redemption price,
348 or if purchased from the company at the cost to it exclusive of accrued interest.

If, on the last day of February in any year after 1947 there remains in the series A sinking fund $50,000 or more, the trustee will apply the amount then in the fund to the redemption of series A bonds on the next succeeding May 1. Series A bonds purchased or redeemed by operation of the series A sinking fund will be canceled and no bonds issued to refund them.

Interest for the year 1946 and subsequent years,
349 including 2014, will accrue as a debt on December 31 of each year, and to the extent funds applicable to its payment are sufficient will be payable on May 1 of the following year. Interest for the year 2015 will be payable whether or not earned, on January 1, 2016. In the discretion of the board of directors, amounts applicable to the payment of interest need not be paid if such amount is less than 1 percent of the principal amount of the outstanding series A bonds, but is to be added to the amount payable as interest for the next succeeding year or years. If, at the end of any
351 calendar year prior to maturity of the series A bonds, whether by declaration or otherwise, the amount of accrued and unpaid interest, less the amount of available net income for such year applicable to the payment of such interest, would exceed 18 percent of the principal amount of the outstanding series A bonds, interest for such calendar year, to the extent of such excess, will not accrue, but otherwise accrued and unpaid interest will accumulate and will become payable on the next succeeding interest-payment date or
352 dates as and to the extent earned. All unpaid earned interest and all accumulated unpaid interest, whether

or not earned, will be payable on the maturity of the series A bonds. So long as any series A bonds are outstanding, no interest on any other series of bonds will rank prior to, or on a parity with, interest on the series A bonds.

All computations of available net income will be on a calendar year basis, which will be determined and applied as set forth under the first mortgage.

At the election of the holders of series A bonds of the denomination of $1,000 or any multiple thereof, these bonds may be converted at any time prior to maturity into shares of common stock of the new company, at the rate of 10 shares of common for each $1,000, principal amount of series A bonds, without adjustment for accrued interest on the series A bonds converted, or for dividends on the common stock issued on conversion. The new company has reserved for the conversion of series A bonds 525,000 shares of its common stock.

Both the first mortgage and the general mortgage will provide that no dividend, except a stock dividend, is to be paid in any calendar year on the common stock in excess of $1,700,000, plus an amount equal to $2 a share on any shares issued in excess of the 850,000 shares contemplated by the plan, unless prior to the declaration of such dividend there is set aside out of net income an amount equal to such excess dividend which is to be credited to a debt retirement fund account and is to be paid to the corporate trustee of the first mortgage or the general mortgage as determined by the board of directors and added to any sinking fund for such bonds.

Stock.—The maximum number of shares of the corporation authorized by the amended articles of as-

sociation is 2,500,000 shares, of which 500,000 will be
357 preferred stock of the par value of $100 a share; of the latter 150,000 will be designated as "preferred stock, series A," and 350,000 additional shares will be available as preferred stock, series A. The amount of common stock will consist of 2,000,000 shares without par value, of which 525,000 will be reserved to provide for the conversion of general-mortgage income 4 1/2-percent bonds, series A, 150,000 shares will be reserved to the extent required to provide for the conversion rights of the preferred stock, series A, and the remaining shares may be issued at such
358 time or times, at such price, and upon such conditions as prescribed by the board of directors. Shares of stock of the corporation reacquired by it by repurchase, redemption, conversion, or in exchange for shares of another class and series, or otherwise, will continue to be within the total authorized amount of the capital stock of the corporation, and may be held as treasury stock, or retired and given the status of unissued shares by resolutions of the board of directors.

359 The holders of the capital stock of the corporation, whether preferred or common stock, will not have the preemptive right to subscribe to any additional issue of stock of any class or series or of securities convertible into stock.

The capital represented by each share of stock when issued in the case of par-value stock, will be an amount equal to the par value thereof, and in the case of no-par-value stock issued pursuant to the plan of reor-
360 ganization, will be $100 a share. In the case of no-par-value stock issued in exchange for or in conversion of other securities of the corporation, the capital will be

an amount per share equal to the aggregate principal amount or par value, or, in case of securities without par value, the capital value, of the securities so exchanged or converted, divided by the number of shares of no par value so issued. The capital represented by each share without par value issued as a dividend on outstanding shares of any class, will be an amount per share equal to the sum transferred from surplus to capital account with respect thereto, divided by the number of shares without par value so issued; and in all other cases of the issue of no-par-value shares, will be an amount per share equal to the money and/or the value of any services or property paid for such shares as fixed at the time of issue.

The preferred stock will be preferred as to both earnings and assets over the common stock, and in the event of any voluntary or involuntary liquidation or winding up of the corporation, the holders of preferred stock will be entitled to receive out of the assets of the corporation available for distribution to its stockholders, whether from capital, surplus, or earnings, before any distribution of assets is made to the holders of common stock, an amount equal to the par value thereof, plus an amount equal to current dividends thereon from the beginning of the current calendar year to the date of such distribution, plus an amount equal to any accrued and unpaid cumulative dividends thereon, plus such premiums, if any, as may be specified for any series of preferred stock, other than series A, but will not be entitled to any further participation in such assets. If, upon any voluntary or involuntary liquidation or dissolution or completion of the affairs of the corporation, the assets distributable on or in respect of the preferred

stock are not sufficient to pay in full the amounts
365 aforesaid, the holders of shares of preferred stock of all series will share ratably in any distribution of assets in proportion to the maximum amounts payable on such shares respectively. No merger or consolidation with or into any other corporation which will not in fact result in the liquidation of the enterprise and the distribution of assets to stockholders is to be deemed to be a liquidation, dissolution, or completion of the affairs of the corporation.

Each holder of record of preferred or common stock will be entitled at each meeting of the stockholders to
366 one vote for each share of preferred or common stock.

Until, within some period of 18 calendar months, dividends equivalent in amount to six quarterly dividends at the maximum rates borne by the preferred stock shall have been paid on all outstanding preferred stock, the holders of the outstanding preferred stock, voting separately as a class will be entitled to elect two of the directors of the corporation. If, after the holders of the preferred stock shall have ceased to be entitled as a class to elect two of the directors of the
367 corporation, the amount thereafter paid in dividends on outstanding preferred stock within any period of 18 consecutive calendar months is not equivalent to six quarterly dividends at the maximum rate borne by the preferred stock on all outstanding preferred stock during such period plus a proportionate amount on preferred stock outstanding during a part of such period, the holders of the preferred stock voting as a class will again, and from time to time whenever such event occurs, be entitled to elect two of the directors of the corporation, in addition to their right
368 to vote with the holders of the common stock in the election of the remaining directors of the corporation,

until the corporation has within a period of 18 calendar months paid dividends on all outstanding preferred stock, in an amount equivalent to six quarterly dividends at the maximum rates borne by the preferred stock on all outstanding preferred stock during such entire period, plus a proportionate amount on preferred stock outstanding during part of such period. Any director elected by the holders of the preferred stock, voting as a class, will continue to serve as such director for the full term for which he was elected, notwithstanding that prior to the end of such term the holders of preferred stock ceased to be entitled as a class to elect two of the directors of the corporation as provided.'

Preferred stock, in addition to the 150,000 shares of preferred stock, series A, presently to be issued, may be issued from time to time as additional preferred stock, series A, or as preferred stock of any other series, one or more, in the discretion of the board, but no preferred stock in excess of 150,000 shares may be issued without the concurring vote or written consent of the holders of a majority of the outstanding preferred stock, voting separately and as a class, unless such preferred stock is issued

(a) to refund bonds or other obligations issued or assumed by, or secured by lien on the property of the corporation or a subsidiary company;

(b) to retire preferred stock of a subsidiary company;

(c) to provide for capital expenditures to be made by the corporation or by a subisdiary company; or

(d) to reimburse the corporation for expenditures made for any of the purposes stated.

373 Out of the net earnings or net assets of the corporation legally available for the payment of dividends, the holders of preferred stock, series A, will be entitled to receive, when and as declared by the board of directors, but subject to the rights of any other series of preferred stock hereafter created, current dividends in cash at the rate of 5 percent per annum, in respect of each calendar year, beginning with 1946, and no more, payable annually, semi-annually, or 374 quarterly as the board may from time to time determine, before any sum or sums out of the earnings of such calendar year may be applied to (a) the purchase or redemption of preferred or common stock, or (b) the payment of dividends on common stock. Such dividends on the preferred stock, series A, will not be cumulative, whether or not earned in any calendar year, but dividends on preferred stock, series A, up to an aggregate of 5 percent may be paid out of earnings of any calendar year or at any time thereafter. Dividends on preferred stock, series A, will be deemed 375 to be paid out of earnings of the calendar year last preceding the year in which paid unless otherwise specified by the board of directors at the time of declaration. No dividends will be declared or paid on the common stock out of earnings of any calendar year unless and until dividends at the rate of 5 percent per annum on the series A preferred and full dividends for such calendar year on all other series of preferred stock then outstanding, including all unpaid accumulated dividends, shall have been paid out 376 of such earnings, or shall have been declared and set aside in trust for payment out of such earnings.

After dividends of 5 percent per annum have been paid out of earnings, and full dividends for such calendar year on all other series of preferred stock, including all unpaid accumulated dividends, if any, or such dividends have been declared and set aside in trust, the common stock will be entitled to receive all additional amounts distributed as dividends out of the earnings of such calendar year, but no dividends will be paid on the common stock in any calendar year unless dividends on the preferred stock, series A, at the rate of 5 percent per annum and full dividends for such calendar year on all other series of preferred stock at the time outstanding, together with all unpaid accumulated dividends thereon, if any, have been paid in such calendar year; or declared and set aside in trust for payment in such calendar year. 377 378

The rights of stockholders in respect of dividends will be subject to the power of the board of directors from time to time to make and set aside out of net earnings or net assets, such reserves and to make such other provisions, if any, as the board may deem necessary or desirable for working capital, additions, betterments and improvements and for acquisition or construction of new or additional railroad equipment, for debt retirement, and for any other lawful purpose or object. The board may also authorize the use of any available corporate funds for the purpose of purchasing stock of the corporation of any class, or of redeeming redeemable stock. 379

The preferred stock, series A, will not be entitled to any premium in event of any voluntary or involuntary liquidation or dissolution or completion of the affairs of the corporation. 380

Shares of preferred stock, series A, will be con-
381 vertible at the option of the respective holders at any time, share for share, into full paid and nonassessable shares of common stock of the corporation, as of the time constituted and at all times the corporation will reserve for such purpose a number of shares of such common stock sufficient to convert all the preferred stock, series A, at any time issued and outstanding. No payment or other adjustment will be made by the corporation or by the holder of the preferred stock, series A, surrendered for conversion in respect of dividends, whether or not declared, on the shares of
382 preferred stock, series A, surrendered for conversion or on the shares of common stock issuable upon conversion.

In case of the redemption of any or all of the shares of preferred stock, series A, the right of conversion will cease as to the shares called for redemption at the close of business on the business day next preceding the date fixed for redemption, unless default be made in the payment of the redemption price. All common stock issued on conversion of preferred stock,
383 series A, will be fully paid and nonassessable free of any stamp tax or governmental charge in respect of the issue and delivery of such certificates. Series A preferred stock may be redeemed in whole or in part at any time at $100 a share, plus unpaid dividends, plus an amount equal to 5 percent per annum on the par value of the preferred stock from the beginning of the current calendar year to the redemption date, less any dividends theretofore declared from earnings in such year. If less than all the outstanding
384 shares are to be redeemed, the redemption may be made either by lot or pro rata.

Preferred stock of any series, one or more, other than series A, may be created out of the additional 350,000 shares of preferred and may bear dividends as such rate, cumulative or noncumulative, may be redeemable or nonredeemable, and may have such other rights and privileges, and be subject to such limitations and restrictions as may be determined by the directors prior to its issue.

In December 1945, the Virginia court directed that there should be distributed to holders of outstanding bonds subjected to the plan a sum not exceeding $9,334,300, which was to be applied to the payment of interest accrued for the year 1945, or, to the extent that the amount distributed on any particular issue of bonds might exceed the interest accrued thereon for the year 1945, to interest accrued for the year 1944. This amount will be distributed as among the different issues in accordance with section VI of the plan, and pursuant to court order R-22, as shown in appendix A. Of the sum of $9,334,300 to be so distributed,[1] $9,207,400 will be paid out of earnings between June 1, 1945, and the date of consummation, to the extent that earnings are sufficient therefor, and the balance will be paid out of other cash and current assets available to the new company in the reorganization. It is expected that this distribution will be made at the same time as new securities are distributed. As the earnings for the period from May 31, 1945, to the

[1] The estimated amount of $2,194,927.42, as shown in appendix C, payable to holders of bonds subject to the plan, in case they do not become subject thereto hereafter, is based on the proceeds of sale of parcels of property subject to the respective mortgages, and assumes that the earnings of the mortgaged property for the period between May 31, 1945, and the consummation of the plan, will not exceed $9,207,400, the maximum amount to be distributed to bondholders out of such earnings on consummation of the plan, pursuant to Order R-22 of the Virginia court.

delivery date cannot be determined at this time, it is not possible to state how much of this sum will be payable out of earnings, and how much out of cash to be reserved by the reorganization committee pursuant to the purchase agreement. It is not expected that the financial position of the new company will be affected by the source from which such payment is made, since the purchase agreement contemplates that the new company will ultimately receive an amount substantially equivalent to the earnings from May 31, 1945, to the delivery date, less such amounts as are distributed to bondholders out of such earnings, either because of Order No. R-22 or because certain bondholders elect not to participate in the plan and become entitled to receive their proportionate shares of such earnings as finally determined.

The new company will ultimately receive, in addition to the physical properties and other assets, an amount equal to the net current assets and net reserves in the hands of the receivers at the delivery date, less

(a) such part of the sum of $10,000,000 reserved by the final decree (or such smaller sum as represents the balance then remaining of the $10,000,000 reserve fund) as may be required to be used for the purposes therein specified,

(b) the $9,334,300 to be distributed pursuant to Order No. R-22, and

(c) any additional participation in earnings subsequent to May 31, 1945, to which any dissenting bondholder may be entitled in excess of such dissenting bondholder's share of the sum of $9,334,300.

Under the plan no provision is made for holders of the present adjustment bonds, unsecured claims not entitled to priority, preferred or common stock. The new company will not assume certain contingent liabilities, either as to principal or interest, on guaranties of obligations of the companies shown in the plan whose properties are not to be dealt with in the reorganization, or are to be contingently dealt with. 393

Also, certain claims not affected by the plan will be paid in cash in due course, unless otherwise provided for either by receivers or by the new company. Those not paid in cash will be assumed by the new company and paid in the usual course of business. These include personal injury claims to employees of any of the corporations involved in the reorganization claims of personal representatives of deceased employees of these railroads, taxes and assessments not otherwise provided for, due to the United States, any State, municipality, or other taxing authority, from any railroad corporation the properties of which are included in the plan. Claims not otherwise dealt with in the plan against any railroad corporation, the properties of which are dealt with in the plan, incurred in the ordinary course of business prior to December 23, 1930, and thereafter by the receivers appointed in creditors and foreclosure suits in equity, to the extent that such obligations are entitled to priority over mortgage bonds of such railroad corporations. Also excluded from the plan are claims other than those specifically mentioned, which are entitled to priority of payment over any mortgage bond of any railroad corporation, the properties of which are dealt with in the plan, by virtue of State or Federal laws. Pensions theretofore granted to employees by corporations, the 394 395 396

properties of which are involved in the plan, and are being paid by such corporations, or their receivers. Also excluded are unsecured claims which would have been entitled to priority if a receiver in equity of the property had been appointed by a Federal court on the day of approval of the petition.

The new company will pay in cash but without interest any unpaid interest on bonds publicly held of any of the corporations the properties of which are involved in the plan, which are due and declared payable, but were unpaid prior to December 23, 1930, and unpaid interest payable thereafter and prior to the date of consummation, under court orders, on demand.

Within 1 year after transfer of the properties of the old company to the new company, the latter may disaffirm executory contracts and leases of the railroad corporations, the properties of which are dealt with in the plan, except those made binding by court orders.

Interests in suits pending at the date of transfer, in which any of the corporations, the properties of which are dealt with in the plan, are parties, will be assigned to the new company for continuing prosecution.

By order dated March 5, 1946, the Virginia court, in an order designated R-24, approved the form of the proposed first mortgage and the general mortgage as modified, both dated January 1, 1946, the proposed amendment to the articles of association of the Seaboard Air Line Railroad Company, the proposed voting-trust agreement, dated April 1, 1946, the proposed scrip agreement providing for the issue of scrip for first-mortgage bonds, general-mortgage bonds, and preferred stock, series A, subject to such modification of the general mortgage as may be necessary to pro-

vide in substance that so long as any general-mortgage bonds, series A, are outstanding, no dividends will be paid on any stock of any class out of any surplus resulting, because of deduction of $400,000 in determining available net income from earnings for any year in which available net income applicable to interest on general-mortgage bonds was insufficient to pay full interest for that year and all accumulated unpaid interest. 401

Pursuant to recommendations contained in the special master's report the court ordered that by the end of 1944 two special reserve funds be set aside by the receivers, one for $6,000,000, thereafter increased to $10,000,000, for the purpose of providing for expenses of reorganization and other requirements; and the other $11,000,000, to be used only with court approval, for additions and betterments to overcome deferred maintenance, and for other contintencies, looking to the adjustment of the property to post-war conditions and requirements, or after reorganization, as the board of directors of the reorganized company may determine, subject to court restrictions. This fund is expected to provide for the completion of the extraordinary capital expenditure program and for making up all deferred maintenance, if used for these purposes, but will not be needed if earnings are available therefor. The $10,000,000 fund is expected to exceed the expenses of reorganization, so the new company is of the opinion that it will have adequate working capital. 402 403

A constructed balance sheet as of December 31, 1945, (appendix D) shows current assets of $51,712,810, including cash of $8,644,997, temporary cash investments of $14,007,587, and special deposits of $194,- 404

014. This balance sheet excludes the two reserve funds described above, aggregating $19,334,300 created by the court. The current liabilities are shown as $23,129,102, making the net current assets $28,583,708. However, since the balance sheet was made, a tax plural of $2,969,318 in respect of Federal income and excess tax profits and State income tax over accurals has been canceled. This item was carried under current liabilities and its cancelation would increase the net current assets by that amount to $31,553,026. In the constructed balance sheet deductions aggregating $1,799,388 were made to allow for purchase of certain outstanding receivers' certificates, purchase of outstanding Raleigh bonds, and of outstanding bonds of certain leased lines, as well as the redemption of $21,100 of receivers' certificates.

As of the date of the last hearing, April 15, 1946, there had been subjected to the plan more than 97 percent in principal amount of all securities dealt with under the plan, and the new company is advised that the reorganization committee under the plan is now prepared to consummate the plan, subject to necessary approvals of the courts and of this Commission.

The valuation of the properties, and the earnings from operation of the properties are set forth in our report of August 12, 1944, in *Seaboard Air Line Ry. Co. Receivership, supra.*

VOTING TRUST AGREEMENT

The voting-trust agreement dated April 1, 1946, between Seaboard Air Line Railroad Company (new company), the holders of voting trust certificates and scrip therefor, and Henry W. Anderson, Joseph France, Otis A. Glazebrook, Jr., Sam H. Husbands,

and Legh R. Powell, Jr., as voting trustees, appointed by the courts having jurisdiction of the receivership proceedings, provides (1) That in order to protect the continuity of management and the interest of the bondholders, all shares of the new company's common stock issued under the plan shall be issued to the five voting trustees. (2) Upon delivery to the depositary, at the time in office, of a certificate or certificates of the common stock of the new company in negotiable form or registered in the names of the voting trustees or their nominees, the depositary shall execute and cause to be delivered in accordance with any request by the voting trustees or requisition by the reorganization managers, delivered to the depositary, voting-trust certificates and scrip for the aggregate number of shares of common stock represented by the stock certificate or certificates. The voting-trust certificates so issued shall be registered in the names and be of the denominations specified in the request. All scrip certificates shall be in bearer form issued in denominations of 1/10,000 of a share and multiples thereof, shall not bear dividends and shall not entitle the holder to any of the rights of a voting-trust certificate but shall be exchangeable for voting-trust certificates when presented in proper multiples. (3) The scrip certificates shall be void if not exchanged before March 31, 1952, provided, however, that they shall not become void until the termination of the voting-trust agreement if such agreement extends beyond April 1, 1952. Whenever certificates for shares of common stock, other securities, cash or property of the new company, under the terms of this agreement, are deliverable or distributable to the holders of voting-trust certificates a proportionate part shall be paid or delivered to holders of any voting-trust certificates which are issuable

in respect to surrendered scrip. After the scrip be-
413 comes void the proportionate part of such stock, etc., as would be delivered in respect thereto shall be paid or delivered to the new company. (4) The Chase National Bank has been appointed depositary to hold office until otherwise ordered by the voting trustees and to sign, issue, reissue, and register voting-trust certificates and/or scrip. The certificates for all common stock held by or in the name of the voting trustees shall be deposited with the depositary. (5) The voting trustees in their unrestricted discretion in person or by nominee or nominees shall possess and be en-
414 titled to exercise, without limitation the right to vote for such persons for directors of the new company as they may see fit except that (a) without the consent of a majority in interest of the voting-trust certificates at the time outstanding, the common stock deposited with the voting trustees shall not be voted in favor of the sale or lease of all or substantially all of the assets of the new company or of its merger or consolidation with or into another corporation, and (b) such stock shall at all times be voted for the elec-
415 tion as directors of the new company of all persons then in office as voting trustees unless such person is unwilling to serve. (c) If the time of payment of any interest installment upon the bonds issued under the new company's first mortgage shall have been postponed and such interest shall continue to remain unpaid, the holders of a majority in principal amount of such bonds, not less than 90 days before any meeting of stockholders for the election of directors, may nominate in writing to the voting trustees any person
416 or persons for election as directors, and in such event the deposited stock shall be voted for such number of

persons so nominated as shall constitute a majority of the directors of the new company. No person shall 417
be elected as director who as a matter of law in the opinion of counsel for the voting trustees is ineligible to act as director of the new company. (6) The agreement shall continue in effect until April 1, 1951, unless the voting trustees by unanimous action shall terminate it prior to that date or a majority of the voting trustees with the concurrent vote or consent in writing of a majority in interest of the voting-trust certificates then outstanding shall extend it for a further term or terms not exceeding 5 years in the aggregate. Notice of termination or extension of the 418
trust shall be given by publication once in each 2 successive weeks in a newspaper of general circulation in New York City and another in Norfolk, Va. Upon termination of the trust, the holders of trust certificates and scrip shall be entitled to receive common stock, held by or for the voting trustees upon surrender of voting-trust certificates in an amount equal thereto, and the payment if required of a sum sufficient to cover taxes or other Governmental charge or other expense in connection with the delivery. Any 419
certificates not exchanged at the expiration of 5 years from the termination of the trust shall be sold and the proceeds held by the new company for the benefit of the holder or holders of such certificates in full satisfaction of all claims in connection therewith.

(7) Each voting trustee shall receive compensation at the rate of $1,000 per annum. Any vacancy occurring among the voting trustees shall be filled by them if there be three remaining; if less than three then 420
by the Virginia court, provided, however, that as a successor to Sam H. Husbands, so long as the United

States of America or any agency thereof shall own
421 voting-trust certificates for 25,000 shares of common stock or more, the voting trustees shall elect such person as may be nominated in writing within 20 days after such vacancy shall have occurred by the Reconstruction Finance Corporation.

Voting trustees shall be liable only for their individual malfeasance.

As heretofore stated, the primary purposes of the voting trust are perpetuation of the management and protection of the bondholders. Among the more im-
422 portant railroad competitors in the territory served by the new company are the Atlantic Coast Line and the Southern Railway systems, neither of which has been in receivership or bankruptcy during the past 20 years, whereas the Seaboard Air Line Railway Company has been in the hands of receivers for the past 15 1/2 years and unable to reorganize until it received the benefit of the greatly increased earnings resulting from the recent war. We are not persuaded that these facts furnish unqualified support for con-
423 tinuing the management. Furthermore, as the property is to be taken over by the bondholders of the old company who will receive stock, bonds and cash of the new company for their former holdings, it is somewhat difficult for us to perceive the necessity for the bondholders to be protected against themselves as stockholders. However, by this device the bondholders could sell their voting-trust certificates and scrip, secure in the fact that control of the new company for a time at least would be vested in the voting trustees and the property operated for their express protection.

424 *Control of the new company and indirect control of other railroad properties.*—By the terms of the vot-

ing-trust agreement, article tenth, the voting trustees in their *unrestricted discretion* shall possess, and shall 425
be entitled to the right to vote the common stock held by them, for every purpose including specifically, without limitation, the right to vote for such persons as directors of the new company as they in their uncontrolled discretion may determine, subject only to the restriction that they may not without the consent of a majority in interest of the holders of voting-trust certificates vote for the sale or lease of all or substantially all assets of the new company or consolidation or merger of the new company with or into any other 426
corporation. The voting trustees may not be removed from office by the action of all or any portion of the holders of voting-trust certificates. Furthermore, the voting trustees cannot be removed during the life of the trust except for malfeasance and they have the power so long as at least three hold office to appoint their successors.

It would be difficult indeed to vest a more complete control and unrestricted discretion in the exercise of 427
such control of the various railroads constituting the Seaboard Air Line Railroad system, with the single exception of the right to alienate the property, than is vested in the voting trustees during the life of the trust.

We are of the opinion that the voting trustees will have such control of railroads and the Baltimore Steam Packet Company, and will have the right to 428
exercise such indirect control of other railroads, all as referred to above, as is contemplated by section

5(2), (3), and (4) of the Interstate Commerce Act[1] and that under section 5(2) (b), we have jurisdiction 429 to prescribe such conditions and such modifications of the voting agreement as we find just and reasonable.

Although we are aware of the objectionable features of the voting-trust agreement herein set forth, we are of the opinion that it is desirable to have a stable unchanged policy and management of the new company during the early years of its existence to carry out effectively and efficiently the terms and purposes of the plan of reorganization. Accordingly, we will ap- 430 prove the acquisition of control effected by the voting-trust agreement, with Henry W. Anderson, Joseph France, Otis A. Glazebrook, Jr., Sam H. Hsubands, and Legh R. Powell, Jr., as voting trustees thereunder, upon condition however that the voting trust shall not continue in effect after April 1, 1951, except upon our authorization herein, and that no other voting trust shall be created to control the common stock of the new company unless and until so authorized by us in an appropriate proceeding held for that purpose.

431 We deem it unnecessary to subject the voting trustees to the provisions of sections 20, 20a, or 313 of the act.

LIMITATIONS AND PROHIBITIONS OF STATE LAWS

Of the railroad to be acquired by the new company, 736 miles are located in the State of South Carolina.

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[1] For a discussion of control as used in section 5(2), (3), and 432 (4) of the Interstate Commerce Act see Refiners Transport & Terminal Corporation Purchase—Marshall, 39 M.C.C. 271, and by the Supreme Court of the United States in *U. S. v. Marshall Transport Co.*, 322 U. S., 31.

This includes 136 miles of the main line extending from Monroe, N. C., to Atlanta, Ga., 205 miles of the 433
main north and south line of the system between Hamlet, N. C., via Columbia, S. C., to Savannah, Ga., and approximately 370 miles of main-line mileage comprising substantially all of what is known as the "East Carolina Lines". In addition to the railroad mileage there are over 600 separate tracts of miscellaneous real properties located in South Carolina which are appurtenant to, or are used or useful in connection with the operation of, the railroad properties. The State of South Carolina has in its constitution a pro-
hibition against the ownership and operation of rail- 434
roads within the State by corporations of other states.*

There are provisions in the statutes of the State similar to the constitutional prohibitions.

To comply with the provisions of the constitution and statutes of South Carolina, it would be necessary

* Section 8 of Article 9 of the Constitution of South Carolina (1895) reads as follows:

"Section 8. *No foreign corporation can build or operate a railroad in this State—no general or special law for foreign corporation, except on conditions.* The General Assembly shall not grant to any foreign corporation or association a license 435
to build, operate or lease any railroad in this State; but in all cases where a railroad is to be built or operated, or is now being operated, in this State, and the same shall be partly in this State and partly in another State, or in other States, the owners or projectors thereof shall first become incorporated under the laws of this State; nor shall any foreign corporation or association lease or operate any railroad in this State, or purchase the same or any interest therein.

"Consolidation of any railroad lines and corporations in this State with others shall be allowed only where the consolidated company shall become a domestic corporation of this State. No general or special law shall ever be passed for the benefit of any foreign corporation operating a railroad under any existing license of this State or under any existing lease, and no grant of any right or privilege and no exemption from any burden shall be made to any such foreign corporation, except upon condition that the owners or stockholders thereof shall 436
first organize a corporation in this State under the laws thereof, and shall thereafter operate and manage the same and the business thereof under said domestic charter."

for the new company either (a) to form a separate subsidiary corporation to own and operate the system
437 railroad in South Carolina, or (b) to form a separate South Carolina corporation and then consolidate that corporation with itself so that the resultant corporation would be a corporation both of South Carolina and Virginia. Either course would result in substantial expense. If a separate corporation were organized to own the South Carolina properties, those properties could not be leased to the Virginia corporation, but would have to be operated separately, requiring the maintenance of a separate corporate organization and
438 of separate executive, operating and accounting organizations. This would involve an initial outlay estimated at $18,300 and continuing expenses estimated at approximately $305,000 a year. Creation of a separate South Carolina corporation and a subsequent consolidation would require an initial outlay estimated at $71,800 and continuing expenses estimated at approximately $1,000 a year, and would result in substantial difficulties for the new company both in effecting the reorganization of the properties and in the future
439 conduct of the new company's affairs. For example, the constitution of South Carolina requires the general assembly to provide by law for the cumulative voting of stock in the election of directors, and the State statutes make such cumulative voting mandatory for all corporations of the State, including railroad corporations. The plan of reorganization does not contemplate, or permit, that the new company's stock shall have such cumulative voting rights, and to give the stock such rights at this time would involve a
440 modification of the plan, which the new company is advised would require resubmission of the plan to the courts.

It is argued that the restrictions imposed upon foreign railroad corporations by the constitution and statutes of South Carolina constitute a burden on interstate commerce which we have full power under the provisions of section 5 of the act to override. *Texarkana & F. S. Ry. Control*, 193 I. C. C. 521; *Kansas City Southern Ry. Co. Merger*, 254 I. C. C. 529; *Texas v. United States*, 292 U. S. 522. The new company is advised that if we authorized it to acquire and operate the properties of the system located in South Carolina it will have the power to do so irrespective of those restrictions. It suggests, however, that to avoid complications and trouble for the new company our report in these proceedings should contain specific reference to these restrictive provisions so as to show on its face that our order is intended to override them.

The total operating revenues assigned in 1945 to the 736 miles of system railroad located in South Carolina amounted to over $25,000,000. Such revenues for 1940 were $7,700,000. For a normal year it is anticipated that they will be less than in 1945. The chief finance and accounting officer for the receivers says that the estimated expenses of maintaining a separate corporation to own and operate the railroad in South Carolina have been stated on a conservative basis and might not be materially reduced even though total operating revenues of the railroad in South Carolina were to decline to $7,000,000 or $8,000,000 a year.

It would clearly be an unnecessary and undue burden on interstate commerce for the new company to be subjected to continuing expenses of over $300,000 a year to maintain a separate corporation to own and operate the railroad in South Carolina. It is not so clear, however, that the cost of organizing a corpora-

tion under the laws of South Carolina to acquire the
445 properties in that State and thereafter consolidate the South Carolina corporation with the Virginia corporation, viz, $71,800, or the cost of maintaining the consolidated corporation as a South Carolina corporation, viz, $1,000 a year, would be unduly burdensome. Organization of a South Carolina corporatiton, and consolidation with the Virginia corporation, however, would cause substantial delay and needless expense. In *Texas v. United States, supra*, the Supreme Court, in discussing the purpose of the provisions of section 5 of the act, said (p. 530):

446

> These broadening provisions of the Emergency Railroad Transportation Act, 1933, confirm and carry forward the purpose which led to the enactment of Transportation Act, 1920, * * *. We found that Transportation Act, 1920, introduced into the federal legislation a new railroad policy, seeking to insure an adequate transportation service. * * * It is a primary aim of that policy to secure the avoidance of waste. * * *
> 447 The authority given to the Commission to authorize consolidations, purchases, leases, operating contracts, and acquisition of control, was given in aid of that policy. * * * The criterion to be applied by the Commission in the exercise of its authority to approve such transactions—a criterion reaffirmed by the amendments of Emergency Railroad Transportation Act, 1933,—is that of the controlling public interest. * * *

The provisions of section 5 were further amended
448 by the Transportation Act of 1940 which contains a declaration of the national transportation policy. The provisions as to relief from restraints, limitations and

prohibitions of State law which would stand in the way of the execution of the policy of Congress were clarified and strengthened. In administering the provisions of section 5 and other provisions of the act we must do so with a view to carrying out the declared policy of Congress, including the promotion of economical and efficient service and the fostering of sound economic conditions in transportation. Corporate simplification wherever possible is in accord with this policy. Furthermore, a termination of a longstanding receivership of railroad properties is always a matter of substantial public interest. The delays that would result and the needless expense that would be incurred should the new company undertake to comply with the constitution and statutes of South Carolina requiring the creation of a separate corporation to acquire, or to acquire and operate, the railroad which the new company proposes to acquire and operate in that State would not accord with the natitonal transportation policy and would not be consistent with the public interest.

The provisions of section 5(11) will relieve the new company of the restraints, limitations and prohibitions of State law only insofar as may be necessary to enable it to carry into effect the transactions approved and provided for, in accordance with the terms and conditions which we impose, and to hold, maintain, and operate any properties, and exercise any control or franchises acquired through such transactions.

EXPENSES OF THE REORGANIZATION

Several statements were filed giving estimates of expenses incurred, amounts paid thereon, and amounts remaining to be paid. An estimate of expenses to be

paid by the new company upon consummation of the
483 reorganization is given as $194,955, and consist of State fees for increase of authorized common and preferred stock, fees for qualifying to do business in various States, recording fees and State taxes on deeds and mortgages, trustees' fees, registration of temporary general-mortgage bonds, printing temporary securities, issue of voting-trust certificates and scrip, signing temporary bonds, fees of scrip agent, listing new securities on stock exchange, printing and miscellaneous expenses. The expenses of the reorganization committee were given as $552,891.27, of which
484 $113,291.84 were paid as of February 28, 1946, $374,809.43 were due for services rendered, and $64,790 were the estimated cost of work to be done. Consideration of these expenses will be had in the proceeding before us under section 77(p) of the Bankruptcy Act, as amended. See *Seaboard Air Line Ry. Co. Receivership,* 257 I. C. C. 837. A statement was filed giving the amount of the allowances requested for the receivers, their counsel in Norfolk and New York, and their chief finance and accounting officer, as $1,443,170. This
485 amount was divided as follows: Receiver Powell, $238,080, Receiver Anderson $264,000, Norfolk counsel for receivers, $120,000, New York counsel for receivers, $720,590, chief finance and accounting officer, $100,500. The request was filed asking for allowances of additional compensation in such amount as the court might think proper, but the court requested that the amounts be stated. In December 1945, the court approved an allowance of $250,000 on account of this application, reserving for future consideration the
486 division of the amount, and the amount of additional allowance, if any, which should be made. A statement

was also submitted, giving a summary of the allowance petitions filed pursuant to an order of the Virginia court dated August 10, 1945, requiring parties deeming themselves entitled to allowances in the receivership proceedings, but excluding receivers and thir counsel, to file petitions before October 1, 1945. The allowances requested aggregate $3,007,624.17, and include $2,815,535.25 for compensation and $192,088.92 for expenses. These requests include compensation and expenses for members of various committees and their counsel, trustees of mortgages and their counsel, insurance companies and their counsel, depositaries' fees, fees for research work, etc. The Virginia court by order dated February 18, 1946, appointed William L. Marbury, Jr., of Baltimore, as special master to hear the allowance petitions, directed him to hold hearings thereon, and to file his report not later than July 1, 1946. On April 11, 1946, the Virginia court appointed H. Vernon Eney of Baltimore as counsel to represent the receivership estate and the creditors in connection with the allowance petitions.

The transactions hereinabove set forth will not result in any increase in the fixed charges of the railroad system to be acquired. No other railroad has sought to be included in the proposal. Adequate and efficient transportation service to the public will be promoted.

Employees.—Inasmuch as the transaction applies only to the acquisition of the properties of the old company by the new company without change in operation, it does not appear that any railroad employee could be adversely affected. However, pursuant to our findings in *Chicago & North Western Railway Company et al. Merger*, 261 I. C. C. ——, decided May 29,

1946, our authorization herein is granted subject to
461 the conditions that

> during the period of 4 years from the effective date of our order herein such transaction will not result in employees of the carrier or carriers by railroad affected by such order being in a worse position with respect to their employment, except that the protection afforded to any employee pursuant to this sentence shall not be required to continue for a longer period, following the effective date of such order, than the period during which
462 such employee was in the employ of such carrier or carriers prior to the effective date of such order.

Upon consideration of the record in these proceedings, we find that subject to the above-stated conditions with respect to the protection of employees, the purchase by the Seaboard Air Line Railroad Company of the railroad properties and other assets of the Seaboard Air Line Railway Company or its receivers, or both, and operation thereof in the States of Virginia,
463 North Carolina, South Carolina, Georgia, Florida, and Alabama, including those operated under contract, lease, or agreement, and acquisition of control, or joint control, by the Seaboard Air Line Railroad Company through ownership of capital stock of certain other railroad companies and the Baltimore Steam Packet Company, described in the report aforesaid, are transactions within the scope of section 5(2) of the Interstate Commerce Act, as amended, that the terms and conditions proposed are just and reasonable, and
464 that the transactions will be consistent with the public interest.

We further find that the control of the various carriers, to the extent herein stated, by Henry W. Anderson, Joseph France, Otis A. Glazebrook, Jr., Sam H. Husbands, and Legh R. Powell, Jr., voting trustees, is a transaction within the scope of section 5(2) of the Interstate Commerce Act, as amended, and that, subject to the conditions prescribed in this report, the terms and conditions proposed are just and reasonable, and the transaction will be consistent with the public interest:

In authorizing the issue of the new securities and the assumption of obligations as proposed, we are concerned with not only that the securities will be fully supported by tangible property, that the earnings will be as nearly as can be determined sufficient to service the securities and that the terms of the securities are in conformity with modern and sound financial practices, but we are also vitally concerned with the total amount of cash to be received by the new company in connection with the purchase of the properties including its working capital, to the end that the stability of the new company may be reasonably assured at its inception. As has been stated above claims for allowances and expenses, excluding claims of receivers and their counsel, have been filed in the total amount of $3,007,624.17, while the claims of receivers, their counsel, and chief accounting officer amount to $1,443,170, making a total of $4,450,794.17. The receivers, their counsel, and chief accounting officer were paid to December 31, 1945, as compensation a total of $1,863,205. From the facts known to us, we regard claims for any such amount as $4,450,794.17 excessive and unjustified. As has also been indicated, the Virginia court has assumed jurisdiction over the approval of these claims

and has appointed a special master to report thereon. We must assume that the court when approving and authorizing the payment of these claims will consider fully the merits of each of them and will limit payments to such amounts as it finds just and reasonable so that a major portion of the $10,000,000 fund set aside for expenses may be paid to the new company to be used for its corporate purposes.

We find that (1) the proposed issue by the Seaboard Air Line Railroad Company of not exceeding $32,500,000 of first-mortgage 50-year 4-percent bonds, series A, $52,500,000 of income-mortgage 70-year 4½-percent bonds, series A, $15,000,000 of preferred stock 5-percent, series A, of the par value of $100 a share, and 849,997 shares of common stock without par value, but with a stated value of $100 a share, and such additional shares of common stock not exceeding 675,000 shares as may be necessary for conversion purposes; and (2) that the proposed assumption by the Seaboard Air Line Railroad Company of obligations and liabilities of (a) Legh R. Powell, Jr., and Henry W. Anderson, as receivers of the Seaboard Air Line Railway Company in respect of not exceeding $13,588,000 of receivers' equipment-trust certificates, consisting of $250,000 of series FF, $283,000 of series GG, $192,000 of series HH, $1,270,000 of series JJ, $1,530,000 of series KK, $1,482,000 of series LL, $2,346,000 of series MM, $2,552,000 of series NN, and $3,683,000 of series OO, (b) of the Seaboard Air Line Railway Company, or its receivers, or both, as guarantors or lessees, or both, in respect of the following securities: $323,333.33 of first-mortgage 4-percent bonds of the Birmingham Terminal Company, $100,000 of first and general mortgage 5-percent bonds, $2,400,000 of refunding and ex-

tension mortgage 5-percent bonds, series A, $1,100,000 of refunding and extension mortgage 6-percent bonds, 473
series B, and $400,000 of refunding and extension mortgage 4½-percent bonds, series C, all of the Jacksonville Terminal Company, $280,000 of 1½-percent serial promissory notes of the Norfolk & Portsmouth Belt Line Railroad Company, and $200,000 of first-mortgage 4-percent bonds of the Tampa Union Station Company; and (c) of the Seaboard Air Line Railway Company, or the receivers, or both, as lessee by lease or operating agreement, in respect of the following securities insofar as rental payments are involved: 474
Athens Terminal Company first-mortgage 5-percent bonds, $200,000; Birmingham Terminal Company, 1500 shares of capital stock of the par value of $100 each; Durham Union Station Company, 333 shares of capital stock of the par value of $100 each, and $60,000 of first-mortgage 5-percent bonds; North Charleston Terminal Company, 1050 shares of the capital stock of the par value of $100 each; Savannah Union Station Company, $600,000 of first-mortgage 4-percent bonds; Tampa Union Station Company, 300 shares of capital stock of the par value of $100 each; Atlanta 475
Terminal Company, $1,600,000 of first-mortgage 4-percent bonds; and 1500 shares of capital stock of the par value of $100 each; all as aforesaid, (A) are for lawful objects within its corporate purposes, and compatible with the public interest, which are necessary and appropriate for and consistent with the proper performance by it of service to the public as a common carrier, and which will not impair its ability to perform that service, and (B) are reasonably necessary and appropriate for such purposes. 476

An appropriate order will be entered.

APPENDIX A

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Reorganization
Seaboard Air Line Railway Company

Cash to be distributed to security holders, pursuant to Order No. R. 22 of the Virginia Court, in addition to Securities and cash stated in Appendix E to Report.

Title of issue	*Total distribution*	*Distribution per $1,000 bond*
CC RR Co, 1st Cons 4' '49	$ 240,000	$ 80.00
478 FC&P RR Co, 1st Cons 5's '43	437,200	100.00
FWS Ry, 1st 5's '34	65,700	87.02
G&A Ry, 1st Cons 5' '45	312,300	51.32
GC&N Ry Co, 1st 6's '34	481,500	89.83
SAL Ry A-B, 1st 4's '33	475,200	80.41
The S&R RR Co., 1st 5's '31	197,100	78.84
The SB RR Co. 1st (sou div.) 5's '41	130,500	64.19
SAL Ry. 1st 4's '50	1,098,900	86.07
SAL Ref. 4's '59	900,900	46.56
SAL Ry. Co. 1st & Con 6's '45	3,551,400	57.28
SAL Ry. 3 Yr. 5% sec. notes '31	343,800	45.84
479 SAL Ry. Co. sec. 210 6% loan notes to U. S. Govt.	972,900	.....
G&A Term Co. 1st 5's '48	44,100	44.10
T&GC RR Co. 1st 5's '53	74,700	63.09
The S.BL Co, Sec. 210 loan Deficiency claim	8,100	.....
Total distribution	$9,334,300	$.....

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APPENDIX B

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SECURITIES SUBJECT TO PLAN AS OF CLOSE OF BUSINESS MAY 19, 1945

Title of Issue	Principal Amount Outstanding	Principal Amount Subject to Plan	Percentage Subject to Plan
I Unforeclosed Bonds			
Carolina Central Bonds	$ 3,000,000	$ 2,646,000	88%
F. C. & P. Bonds	4,372,000	4,063,000	93%
Seaboard Notes	7,500,000*	6,722,000*	89%
II Foreclosed Bonds			
Florida West Shore Bonds	755,000	697,000	92%
Georgia & Alabama Bonds	6,085,000	5,212,000	85%
G. C. & N. Bonds	5,360,000	4,989,000	93%
Atlanta-Birmingham B'ds	5,910,000	5,416,000	91%
Seaboard & Roanoke B'ds	2,500,000	2,447,000	97%
South Bound Bonds	2,033,000	1,750,000	86%
Seaboard First 4s	12,768,000	10,737,000	84%
Seaboard Refundings	19,350,000	15,750,000	81%
Seaboard Consolidateds	78,974,000†	67,164,500†	85%
III Leased Line Bonds			
G. & A. Terminal	1,000,000	952,000	95%
Tampa & Gulf Coast	1,184,000	190,000	16%
Total	$150,791,000	$128,744,500	85%

* Disregarding partial payments made on account of principal.

† Includes bonds pledged with U. S. Treasury, but excludes bonds pledged to secure Seaboard Notes.

APPENDIX C

Distributive Shares of Undeposited Bonds and Market Values of New Securities

Issue	Outstanding	Subject to Plan	Undeposited Bonds	Distributive Share Undeposited * Per $1000	Distributive Share Undeposited * Total	Market Value of New Securities † Per $1000	Market Value of New Securities † Total
Seaboard & Roanoke 1st 5s, 1931	$ 2,500,000	$ 2,484,000	$ 6,000	$ 555.90	$ 3,335.40	$1,051.42	$ 6,308.52
Ga. Carolina & Northern 1st 6's 1934	5,360,000	5,218,000	142,000	603.50	85,697.00	1,067.61	151,600.62
Southbound R.R. 1st 5's, 1941	2,033,000	2,000,000	33,000	405.30	18,374.90	794.37	26,214.21
Ga. & Alabama 1st 5's, 1945	6,085,000	5,930,000	155,000	287.30	44,531.50	579.75	89,861.25
S.A.L. 1st Mtge. 4's 1950	12,768,000	12,143,000	625,000	469.40	239,375.00	1,190.91	744,318.75
Atlanta-Birmingham 1st 4's, 1933	5,910,000	5,846,000	64,000	530.70	33,964.80	1,028.54	65,826.56
Florida West Shore 1st 5's, 1934	755,000	744,000	11,000	578.30	6,361.30	1,100.56	12,106.16
S.A.L. Refunding 4's, 1959	19,350,000	18,237,000	1,113,000	249.10	277,248.30	558.05	621,109.65
S.A.L. 1st & Consol. 6's, 1945	61,997,500	58,622,400	3,375,100	354.20	1,195,460.42	737.03	2,487,569.95
Carolina, Central 1st Cons. 4's, 1949	3,000,000	2,953,000	47,000	1,000.00	47,000.00	974.50	45,801.50
Fla. Cent. & Penin. 1st Cons. 5's, 1943	4,372,000	4,222,000	150,000	1,000.00	150,000.00	1,000.00	150,000.00
S.A.L. 3-Yr. 5% Notes, 1931	7,500,000	7,318,000	182,000	283.40	51,578.80	589.53	107,294.46
					$2,194,927.42		$4,508,011.63

* Exclusive of any amounts payable out of earnings subsequent to May 31, 1945. It is estimated that the aggregate amounts so payable on deposited and undeposited bonds (including interest to date of final payment on undeposited F.C.&P. and Carolina Central Bonds) will not exceed the $9,207,400 to be distributed therefrom pursuant to Order No. R-22 of the Virginia Court.

† First Mortgage Bonds w.i. at 100
Income Mortgage Bonds w.i. at 85
Preferred Stock w.i. at 71
Common Stock w.i. at 36

APPENDIX D

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TENTATIVE

Constructed Balance Sheet as of December 31, 1945, Giving Effect to the Acquisition by the New Company of all Properties to be Acquired Under the Plan of Reorganization of Seaboard Air Line Railway Company

ASSETS

Investments

(701)	Road and equipment property	$352,248,835 (1)
(702)	Improvements on leased property	451,504
(702½A)	Acquisition adjustment (3)	140,705,666Cr.
(702½B)	Donations and grants	3,728,619Cr.
	Investment in transportation property	208,266,054
(702½C)	Accrued depreciation—Road	2,351,798Cr.
(702½D)	Accrued depreciation—Equipment	39,804,120Cr.
(702½E)	Accrued amortization of defense projects—Road	6,933,765Cr.
(702½F)	Accrued amortization of defense projects—Equipment	16,778,085Cr.
	Investment in transportation property less recorded depreciation and amortization	142,398,286
(704)	Capital and other reserve funds (4)	19,946,204
(704½)	Maintenance funds	7,073,160
(705)	Miscellaneous physical property	4,157,596
(706)	Investments in affiliated companies (5):	
	(A) Stocks	2,480,175
	(B) Bonds	550,595
	(C) Other secured obligations	509,450
	(D) Unsecured notes	2,777,155
	(E) Investment advances	906,211
(707)	Other investments (5):	
	(A) Stocks	1,504
	(C) Other secured obligations	7,462
	(D) Unsecured notes	21,787

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(707½)	Reserve for adjustment of investment in securities (5)	317,669Cr.
	Total investments	180,511,916
	Current Assets	
(708)	Cash (2)	8,644,997(6)
(709)	Temporary cash investments	14,007,587
(711)	Special deposits	194,014(6)
(714)	Net balance receivable from agents and conductors	1,446,817
(715)	Miscellaneous accounts receivable	8,476,389
(716)	Material and supplies	10,803,587
(717)	Interest and dividends receivable	326,743
(713)	Accrued accounts receivable	4,152,543
(719)	Other current assets	3,660,133
	Total current assets	51,712,810
	Deferred Assets	
(720)	Working fund advances	43,510
(722)	Other deferred assets	109,306(6)
	Total deferred assets	152,816
	Unadjusted Debits	
(723)	Prepayments	196,288
(727)	Other unadjusted debits	935,867
	Total unadjusted debits	1,132,155
	GRAND TOTAL	$233,509,697

TENTATIVE

Constructed Balance Sheet as of December 31, 1945, Giving Effect to the Acquisition by the New Company of all Properties to be Acquired Under the Plan of Reorganization of Seaboard Air Line Railway Company

LIABILITIES

	Stock	
(751)	Capital stock	$100,000,000(7)
	Long-Term Debt	
(755)	Funded debt unmatured	85,000,000
(756¼)	Equipment obligations	13,987,000
	Total long term debt	98,987,000

	Current Liabilities	
(759)	Traffic and car-service balances—Cr.....	2,745,052
(760)	Audited accounts and wages payable ...	5,781,526
(761)	Miscellaneous accounts payable	1,442,212
(762)	Interest matured unpaid	140,180
(764)	Unmatured interest accrued	93,652
(766)	Accrued accounts payable	4,708,951
(767)	Taxes accrued	7,777,900
(768)	Other current liabilities	439,629
	Total current liabilities	23,129,102
	Deferred Liabilities	
(770)	Other deferred liabilities	196,832
	Total deferred liabilities	196,832
	Unadjusted Credits	
(774)	Maintenance reserves	7,073,160
(778)	Other unadjusted credits	4,106,364
(779)	Accrued depreciation—Leased property.	17,239
	Total unadjusted credits	11,196,763
	Surplus	
(784)	Unearned surplus	None
	1. Paid in Surplus—.....	
	2. Other unearned surplus—.....	
(785)	Earned surplus—Appropriated	None
(786)	Earned surplus—Unappropriated	None
	Total surplus	None
	GRAND TOTAL	$233,509,697

(1) This account is the aggregate of the 701 accounts of the following companies plus the amount carried in Seaboard's

Account 702 "Improvements on Leased Property," which is referable to such companies, viz:

501 Seaboard Air Line Railway Company
Brooksville and Inverness Railway
Charlotte Harbor & Northern Railway Company
Prince George and Chesterfield Railway
Seaboard-All Florida Properties:

Seaboard-All Florida Railway
Florida Western & Northern Railway Company
East and West Coast Railway

Georgia and Alabama Terminal Company
Georgia, Florida & Alabama Railroad Company
Tampa & Gulf Coast Railroad Company
Tampa Northern Railroad Company
The Seaboard-Bay Line Company

502 (2) This balance sheet excludes the following:

Reserve created by Article XII of the Foreclosure Decree	$10,000,000
Distribution to creditors authorized by Court Order No. R-22 dated December 27, 1945	9,334,300
Total	$19,334,300

(3) The amount shown against Account 702½A "Acquisition Adjustment" reflects the use of book values carried in Accounts 701 and 702 as mentioned in Note (1) above, and such amount would be different if "original cost or estimated original cost as found by the Bureau of Valuation" had been 503 used as contemplated in the text of Account 702½A. As the original cost or estimated original cost has not been supplied by the Bureau of Valuation, such figures could not be used in the preparation of this balance sheet. Use of the Bureau's figures would have the effect of reducing the debit of $352,248,835 shown against Account 701 and the credit of $140,705,666 shown against Account 702½A.

(4) This account includes (1) reserves aggregating $16,000,932 (consisting of U. S. Government Obligations and certain interest accretions) created pursuant to Court Orders—$15,117,932 ($15,000,000 principal and $117,932 interest) pursuant to Court Orders Nos. 362 and 394 and $883,000 pursuant to Court Order No. 418; (2) cash amounting to $3,810,000 on 504 deposit with Trustee of Equipment Trust Series "00" and (3) other deposits with Trustees, etc., $135,272, an aggregate of $19,946,204.

(5) The amounts shown for Accounts 706 and 707 are the book figures, but a reserve of $317,660 to provide for reductions in the value of certain securities—equal to the difference between the book values and the estimated appraised values of such securities as shown by statements filed at hearings before the I.C.C. in April 1944—has been provided in Account 707½. Securities acquired subsequent are stated at cost.

(6) In the preparation of this balance sheet, deduction has been made from cash and other available assets (Accounts 708, 711 and 722) of funds aggregating $1,798,388 necessary to consummate the following cash transactions pursuant to existing Court Orders and as contemplated under the Plan of Reorganization, viz:

Redemption of $21,100 of Receivers' Certificates	$ 21,377
Purchase of $10,000 of outstanding Equipment Obligations and Old Receivers' Certificates	12,982
Purchase of $44,000 of outstanding Raleigh bonds	51,517
Purchase of outstanding leased line bonds as follows:	
$7,630,500 Seaboard-All Florida First 6s	1,577,224
176,000 Georgia, Florida & Alabama First and Refunding 6s	132,000
3,000 Tampa Northern First 5s	3,288

(7) 150,000 shares of preferred stock, par value $100 per share, and 850,000 shares of common stock, without par value, at $100 per share.

The New Company will be guarantor, by assumption, of the following securities and obligations:

Birmingham Terminal Company First Mortgage 4% Bonds, due 1957	328,333.33*

* Represents one-sixth of total issue of $1,940,000 to be guarantee severally by Seaboard Air Line Railroad Company and five other railroads.

	Jacksonville Terminal Company:	
509	**First & General Mortgage 5% Bonds, due 1967**	**100,000.00†**
	Refunding & Extension Mortgage Bonds, due 1967:	
	Series A, 5%	**2,400,000.00†**
	Series B, 6%	**1,100,000.00†**
	Series C, 4½%	**400,000.00†**
	Norfolk and Portsmouth Belt Line Railroad Company 1½% Serial Promissory Notes, due $70,000 annually to 1949	**280,000.00†**
510	**Tampa Union Station Company First Mortgage 4% Bonds, due 1958**	**200,000.00†**

† To be guaranteed jointly and severally by Seaboard Air Line Railroad Company and other railroads.

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APPENDIX E

Allocation of Securities of the New Company

	Principal Amount in Hands of Public 5-31-46 (1)	Total Principal and Interest of Claims in Hands of Public Adjusted to March 31, 1946 (2)	Cash Payment of Interest to be made with distribution of New Securities pursuant to Court Order R-22 dated 12-27-45 (3)	Total Allocation: First Mortgage Bonds (4)	Income Mortgage Bonds (5)	Preferred Stock (6)	Common Stock (Taken at $100 per Share) (7)	Total of Cols. (3) to (7) Incl. (8)	Deficiency—Col. (2) Minus Col (8) (9)
Obligations of Receivers:									
Receivers' Equipment Trust Certificates	$ 13,588,000	$ 13,588,000.00	$.....	(To be assumed by New Company) (The $13,588,000 excludes April 1, 1946 Maturities)					
Seaboard Underlying Divisional Mortgage Bonds:									
Carolina Central RR. Co., 1st Cons. 4's '49	3,000,000	3,269,370.00	240.000	$ 2,490,000	$ 510,000	$.....	$.....	$ 3,240,000	$ 29,370.00
Florida Central and Peninsular RR. Co., 1st Cons. 5's '43	4,372,000	4,962,220.00	437,200	4,372,000	.....	.....	.....	4,809,200	153,020.00
Florida West Shore Ry., 1st 5's, '34	755,000	1,439,513.18	65,700	88,907	419,405	284,739	509,324	1,368,075	71,438.18
Georgia and Alabama Ry., 1st Cons. 5's, '45	6,085,000	10,869,343.79	312,300	357,408	1,597,627	656,461	3,739,875	6,663,671	4,205,672.79
Georgia, Carolina and Northern Ry. Co., 1st 6's, '34	5,360,000	11,098,318.10	481,500	1,912,394	2,365,515	847,385	4,815,871	10,422,665	675,653.10
Seaboard Air Line Ry. Atlanta-Birmingham, 1st 4's, '33	5,910,000	11,227,517.35	475,200	1,839,844	2,171,218	868,661	4,935,076	10,289,999	937,518.35
The Seaboard and Roanoke RR. Co., 1st 5's, '31	2,500,000	4,435,922.84	197,100	727,320	1,052,360	592,635	1,627,685	4,197,100	238,822.84
The South Bound RR. Co., 1st (Southern Div.) 5's, '41	2,033,000	4,273,057.41	130,500	162,801	977,348	225,234	1,281,920	2,777,803	1,495,254.41
Guaranty Trust Co. of N. Y.—Trustee under Lease Agreement Between G&A Ry. & Central of Georgia Ry. Co.	.....	.....	.....	3,610	16,138	6,631	37,777	64,156	—64,156.00
Total Seaboard Underlying Divisional Mortgage Bonds	30,015,000	51,575,262.67	2,339,500	11,954,284	9,109,611	3,481,746	16,947,528	43,832,669	7,742,593.67
Seaboard General Mortgage Bonds:									
Seaboard Air Line Ry., 1st 4's, '50	12,768,000	23,567,085.50	1,098,900	1,746,776	8,931,515	5,877,560	4,705,423	22,360,174	1,206,911.50
Seaboard Air Line Ry., Refunding 4's, '59	19,350,000	40,427,293.67	900,900	2,091,250	5,056,603	653,730	10,958,603	19,661,086	20,766,207.67
Seaboard Air Line Ry., 1st & Cons. 6's, '45	61,997,500	147,513,460.51	3,551,400	12,056,723	20,975,169	3,444,748	37,119,092	77,147,132	70,366,328.51
Total Seaboard Gen. Mortgage B'ds.	94,115,500	211,507,839.68	5,551,200	15,894,749	34,963,287	9,976,038	52,783,118	119,168,392	92,339,447.68
Seaboard Collateral Trust Obligations:									
Seaboard Air Line Ry. Co., 3-Yr. 5% Secured Notes, '31	6,877,575	15,059,460.03†	343,800	1,166,673	2,029,670	333,332	3,591,842	7,465,317	7,594,143.03
Seaboard Air Line Ry. Co., Sec. 210 6% Loan Notes to U. S. Gov't	14,438,827	27,326,139.70‡	972,900	3,301,718	5,744,022	943,340	10,165,015	21,126,995	6,199,144.70
Total Collateral Trust Obligations	21,316,402	42,385,599.73	1,316,700	4,468,391	7,733,692	1,276,672	13,756,857	28,592,312	13,793,287.73

Total Collateral Trust Obligations...	21,316,402	42,385,599.73	1,316,700	4,468,391	7,733,692	1,276,672	13,756,857	28,592,312	13,793,287.73
Total Seaboard Gen'l Mtgs., Incl. Collateral Trust Obligations	115,431,902	253,893,439.41	6,867,900	20,363,140	42,736,979	11,252,710	66,539,975	147,760,704	106,132,735.41
Debt of Subsidiary Railroad and Terminal Companies, the properties of which are operated by Seaboard Receivers as part of the System:									
Georgia and Alabama Terminal Co., 1st 5's, '48	1,000,000	2,007,500.00	44,100	50,084	198,762	99,482	566,317	958,745	1,048,755.00
Tampa & Gulf Coast RR. Co., 1st 5's, '53.	1,184,000	2,445,700.00	74,700	87,763	412,798	155,086	883,887	1,614,234	831,466.00
Total Debt of Subsidiary Railroad and Terminal Cos., etc.	2,184,000	4,453,200.00	118,800	137,847	611,560	254,568	1,450,204	2,572,979	1,880,221.00
The Seaboard-Bay Line Co., Sec. 210 Loan-Deficiency Claim.....	347,550	395,375.92	8,100	44,729	41,850	10,976	62,293	167,948	227,427.92
Total	$161,566,452	$ 323,905,278.00	$ 9,334,300	$32,500,000	$52,500,000	$15,000,000	$85,000,000	$ 194,334,300	$ 115,982,978.00

* This exhibit is a revision of Schedule B of Seaboard Air Line Railway Company Plan of Reorganization (as modified September, 1944) and has been prepared to supply information called for in sub-paragraph 10 of Director Sweet's letter dated April 2, 1945 in Finance Docket 14500 and 14501. This exhibit does not include debt in respect of which securities of the New Company will not be delivered but for which cash provisions will be made as referred to below, viz:

(a) Raleigh and Augusta Air Line RR. Co., 1st 5's, '81 in the principal amount of $12,000, and Raleigh and Gaston R.R. Co. 1st 5's '47 in the principal amount of $15,000, are outstanding as of March 31, 1946. The aggregate principal amount plus unpaid interest to March 31, 1946 is $15,750 and $19,687.50, respectively, an aggregate of $35,437.50. Court order 227-E dated January 28, 1946 authorized the Receivers to purchase these bonds at such price as they may approve not in excess of the principal and accrued interest due on said bonds to the date of purchase. At or prior to consummation of the reorganization it is proposed to deposit cash with the Trustees of these issues and have the two mortgages satisfied.

(b) Court Order R-1 dated February 8, 1944 authorized the Reorganization Committee to purchase G.F.&A. bonds at a flat price of $750 for each $1,000 bond. As of March 31, 1946 the Committee had purchased $1,575,000 principal amount of these bonds at an aggregate cost of $1,181,250, leaving $175,000 principal amount in the hands of the public as of that date. Cash aggregating $131,250 will be required to purchase the remaining $175,000 of this issue at the above stated price of $750 per bond.

(c) Court Order R-7 dated November 10, 1944 authorized the Seaboard Receivers to purchase T.N. bonds at $1,000 per bond, plus unpaid accrued interest thereon to December 1, 1944 amounting to $95.88. As of March 31, 1946 the Receivers had purchased $1,255,000 principal amount of these bonds at an aggregate cost of $1,273,266.65, leaving $8,000 in the hands of the public as of that date. Cash aggregating $8,287.40 will be required to purchase the remaining bonds at the above stated price of $1,095.88 per bond.

(d) There is a relatively small amount of unpaid interest authorized to be paid by the Court which has not been actually paid as of March 31, 1946.

The Seaboard-All Florida Lines, 1st 6's, Ser. A and B, '35, Bonds are excluded from this statement as the properties of the so-called Seaboard-All Florida Lines (Seaboard-All Florida Railway, Florida Western & Northern Railroad Company and East and West Coast Railway) have been purchased by the New Company as authorized by I.C.C.

† The interest embraced in column (2) includes interest accrued for the period 1-1-45 to 3-31-46 aggregating $974,134.24 on $6,000,000 principal amount of SAL Ry. Co. First and Consolidated Mortgage Bonds pledged as collateral under this issue. Prior to 1945 interest was accrued on the primary obligation and not on the collateral.

‡ The interest embraced in column (2) includes interest accrued for the period 1-1-45 to 3-31-46 aggregating $2,756,231.65 on $16,976,500 principal amount of SAL Ry. Co. First and Consolidated Mortgage Bonds pledged as collateral under this issue. Prior to 1945 interest was accrued on the primary obligation and not on the collateral.

April 20, 1946.

Allocation of Securities of the New Company

	Total Including Interest to 3-31-46 per $1,000 of Principal (10)	Cash Distribution as per Col. (3) (11)	Allotment Per $1,000 Principal Amount of Indebtedness: First Mortgage Bonds (12)	Income Mortgage Bonds (13)	Preferred Stock (14)	Common Stock (Taken at $100 per Share) (15)	Total of Cols. (11) to (15) Incl. (16)	Initials of Issues (17)
Seaboard Underlying Divisional Mortgage Bonds:								
Carolina Central RR. Co., 1st Cons. 4's, '49	$1,090.00	$ 80.00	$ 830.00	$ 170.00	$.....	$.....	$1,080.00	CC
Florida Central and Peninsular RR. Co., 1st Cons. 5's, '43	1,135.00	100.00	1,000.00	.....	.....	.....	1,100.00	FC&P 1-C
Florida West Shore Ry., 1st 5's, '34	1,906.64	87.02	117.76	555.50	377.14	674.60	1,812.02	FWS
Georgia and Alabama Ry., 1st Cons. 5's, '45	1,786.25	51.32	58.74	262.55	107.88	614.61	1,095.10	G&A
Georgia, Carolina and Northern Ry. Co., 1st 6's, '34	2,070.58	89.83	356.79	441.33	158.09	898.48	1,944.52	GC&N
Seaboard Air Line Ry. Atlanta-Birmingham, 1st 4's, '33	1,890.75	80.41	311.31	367.38	146.98	835.04	1,741.12	A-B
The Seaboard and Roanoke RR. Co., 1st 5's, '31	1,774.37	78.84	290.93	420.94	237.05	651.08	1,678.84	S&R
The South Bound RR. Co., 1st (Southern Div.) 5's, '41	2,101.85	64.19	80.08	480.74	110.79	630.56	1,366.36	SB
Guaranty Trust Co. of N. Y.—Trustee under Lease Agreement Between G&A Ry. & Central of Georgia Ry. Co.	.....	.....	.....	.....	.....	.....	.....	Guaranty
Seaboard General Mortgage Bonds:								
Seaboard Air Line Ry., 1st 4's, '50	1,845.79	86.07	136.81	699.53	460.33	368.53	1,751.27	1st 4's
Seaboard Air Line Ry., Refunding 4's, '59	2,089.27	46.56	108.07	261.32	33.78	566.34	1,016.07	Ref.
Seaboard Air Line Ry., 1st & Cons. 6's, '45	2,379.35	57.28	194.47	338.32	55.56	598.72	1,244.35	1&C 6's
Seaboard Collateral Trust Obligations:								
Seaboard Air Line Ry. Co., 3-Yr. 5% Secured Notes, '31	2,189.65	45.84	155.56	270.62	44.44	478.91	995.37	3-Yr. Notes
Seaboard Air Line Ry. Co., Sec. 210 6% Loan Notes to U. S. Gov't	1,892.55	67.38	228.67	397.82	65.33	704.01	1,463.21	210 Loans
Debt of Subsidiary Railroad and Terminal Companies, the properties of which are operated by Seaboard Receivers as part of the System:								
Georgia and Alabama Terminal Co., 1st 5's, '48	2,007.50	44.10	50.08	198.76	99.48	566.32	958.74	G&AT
Tampa & Gulf Coast RR. Co., 1st 5's, '53	2,065.63	63.09	74.12	348.65	130.98	746.53	1,363.37	T&GC
The Seaboard-Bay Line Co., Sec. 210 Loan-Deficiency Claim	1,137.61	23.30	128.70	120.41	31.58	179.24	483.23	Def. Claim

In the Original Jurisdiction

EXHIBIT C

513

SUPPLEMENTAL ORDER

At a Session of the Interstate Commerce Commission, Division 4, held at its office in Washington, D. C. on the 28th day of June, A. D. 1946.

Finance Docket No. 14500

Seaboard Air Line Railway Company Receivership

514

Finance Docket No. 14501
Finance Docket No. 14501 (Sub-No. 1)

Seaboard Air Line Railroad Company
Acquisition, Etc.

Further investigation of the matters and things involved in these proceedings having been made, hearings having been held, and said division having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof: 515

It is ordered, That, subject to the conditions with respect to the protection of employees stated in said report, the purchase by the Seaboard Air Line Railroad Company of the railroad properties and other assets of the Seaboard Air Line Railway Company or its receivers, or both, and the operation by the former of such railroads, including those operated under contract, lease or agreement, and the acquisition of con- 516

trol or joint control by the Seaboard Air Line Rail-
517 road Company through ownership of capital stock of certain other railroad companies and the Baltimore Steam Packet Company, described in the report aforesaid, upon the terms and conditions in said report found just and reasonable, be, and it is hereby, approved and authorized.

It is further ordered, That acquisition by the Seaboard Air Line Railroad Company of an interest in the Baltimore Steam Packet Company, as set forth in said report, be, and it is hereby approved and authorized.

518 *It is further ordered,* That control of the various carriers, to the extent stated in said report, by Henry W. Anderson, Joseph France, Otis A. Glazebrook, Jr., Sam H. Husbands, and Legh R. Powell, Jr., voting trustees, upon the terms and conditions in said report found just and reasonable, be, and they are hereby approved and authorized.

It is further ordered, That the Seaboard Air Line Railroad Company when filing schedules adopting or establishing rates or charges applicable to the lines of
519 railroad herein authorized to be purchased shall in such schedules refer to this order by title, date, and docket number.

It is further ordered, That the Seaboard Air Line Railroad Company shall report to this Commission as required by valuation order No. 24, effective May 15, 1928.

It is further ordered, That, pursuant to a plan of reorganization and the respective mortgages hereinafter indicated, the Seaboard Air Line Railroad Company be, and it is hereby, authorized (1) to issue (a) under and pursuant to and to be secured by a pro-

posed first mortgage, dated January 1, 1946, to the Mercantile Trust Company of Baltimore, and Nelson H. Stritehoff, as trustees, not exceeding $32,500,000 of first-mortgage 50-year 4-percent bonds, series A; (b) under and pursuant to and to be secured by a proposed general mortgage, dated January 1, 1946, to the Guaranty Trust Company of New York and Arthur E. Burke, as trustees, not exceeding $52,500,000 of income-mortgage 70-year 4 1/2-percent bonds, series A; (c) not exceeding $15,000,000 of preferred stock 5 percent, series A, of the par value of $100 a share; and (d) not exceeding 849,997 shares of common stock without par value, but with a stated value of $100 a share, and such additional shares of common stock up to 675,000 shares as may be necessary to comply with the conversion rights of the income-mortgage bonds, series A, and the preferred stock, series A; said first-mortgage bonds to be dated January 1, 1946, to bear interest at the rate of 4 percent per annum, payable semiannually, and to mature January 1, 1996; said general-mortgage bonds to be dated January 1, 1946, to bear interest at the rate of 4 1/2 per cent per annum, payable annually, and to mature January 1, 2016; said stock and bonds to be used pursuant to the plan of reorganization and pertinent court orders, in exchange for existing securities of the corporations involved in the aforesaid plan, as stated in the applications and aforesaid report; and upon the termination of the right of deposit under the aforesaid plan, or at any time thereafter, but not later than April 1, 1947, unless an extension of time is approved by this Commission, to sell from time to time at not less than the then current market prices, any or all of the securities which may not theretofore have been issued

pursuant to the aforesaid plan, to the extent necessary to provide cash to pay holders of securities not theretofore deposited thereunder, the respective amounts which they may be entitled to receive.

It is further ordered, That the Seaboard Air Line Railroad Company be, and it is hereby, authorized to assume obligations and liabilities under the terms and conditions and to the extent contemplated by the plan of reorganization in respect of certain securities and leases as follows: (1) the obligation of the receivers of the Seaboard Air Line Railway Company, as guarantors, in respect of not exceeding $13,588,000 of equipment-trust certificates, consisting of $250,000 of series FF, $283,000 of series GG, $192,000 of series HH, $1,270,000 of Series JJ, $1,530,000 of series KK, $1,482,000 of series LL, $2,346,000 of series MM, $2,552,000 of series NN, and $3,683,000 of series OO; and (2) the obligations of Seaboard Air Line Railway Company or its receivers, or both, as guarantors or lessees, or both in respect of $323,333.33 of first-mortgage 4-percent bonds of the Birmingham Terminal Company, $100,000 of first and general mortgage 5-percent bonds, $2,400,000 of refunding and extension mortgage 5-percent bonds, series A, $1,100,000 of refunding and extension mortgage 6-percent bonds, series B, and $400,000 of refunding and extension mortgage 4 1/2-percent bonds, series C, all of Jacksonville Terminal Company, $280,000 of 1 1/2-percent serial promissory notes of the Norfolk & Portsmouth Belt Line Railroad Company, and $200,000 of first-mortgage 4-percent bonds of the Tampa Union Station Company,

It is further ordered, That the Seaboard Air Line Railroad Company be, and it is hereby, authorized to

assume obligations and liabilities of the Seaboard Air Line Railway Company, or the receivers, or both, as lessee by lease or operating agreement, in respect of the following securities, so far as rental payments are involved: Athens Terminal Company first-mortgage 5-percent bonds, $200,000; Birmingham Terminal Company, 1500 shares of capital stock of the par value of $100 each; Durham Union Station Company, 333 shares of capital stock of the par value of $100 each, and $60,000 of first-mortgage 5-percent bonds; North Charleston Terminal Company, 1050 shares of the capital stock of the par value of $100 each; Savannah Union Station Company, $600,000 of first-mortgage 4-percent bonds; Tampa Union Station Company, 300 shares of capital stock of the par value of $100 each; Atlanta Terminal Company, $1,600,000 of first-mortgage 4-percent bonds; and 1500 shares of capital stock of the par value of $100 each.

It is further ordered, That, except as herein authorized, said securities shall not be sold, pledged, repledged, or otherwise disposed of, or obligation assumed, by the Seaboard Air Line Railroad Company, unless or until so ordered or approved by this Commission.

It is further ordered, That, within 10 days after the execution of the proposed mortgages and the amended articles of association, etc., a certified copy of each in the form in which executed, shall be filed by the applicant with this Commission.

It is further ordered, That the applicant shall report concerning the matters herein involved in conformity with the order of the Commission, by division 4, dated February 19, 1927, respecting applications

filed under section 20a of the Interstate Commerce Act.

And it is further ordered, That nothing herein shall be construed to imply any guaranty or obligation as to said securities, or interest or dividends thereon, on the part of the United States.

By the Commission, division 4.

(SEAL.)

W. P. BARTEL,
Secretary.

A true copy:

W. P. BARTEL,
Secretary of the Interstate Commerce Commission.

EXHIBIT D

Columbia, S. C., August 6, 1946.

Honorable W. P. Blackwell
Secretary of State of South Carolina
Columbia, South Carolina

Dear Sir:

Seaboard Air Line Railroad Company, a railroad corporation organized under the laws of the State of Virginia, hereby makes application to you to be admitted to do business in South Carolina as a foreign corporation under the provisions of Sections 7764 to 7767, inclusive, of the Code of Laws of South Carolina, 1942, and in connection therewith delivers to you the following:

(a) A written declaration in due form designating 1201 Liberty Life Building in the City of Columbia, South Carolina, as the place of location of the Company in the State of South Carolina at

which all legal papers may be served upon it by delivery of the same to J. B. S. Lyles, an agent of said Company;

(b) Certified copies of its charter and by-laws and all amendments thereto, together with all increases of its capital stock;

(c) A statement sworn to by R. P. Jones, Vice-President of Seaboard Air Line Railroad Company, showing: (1) the residence and postoffice address of Seaboard Air Line Railroad Company within the State of South Carolina, (2) the amount of its capital stock actually paid, and (3) the names of the officers of said Company (including the President and Secretary) and of the Directors of the Company with their respective places of residence and postoffice addresses; and

(d) Its certified voucher payable to your order in the amount of $50.00 covering the fees required by the laws of South Carolina to be paid by Seaboard Air Line Railroad Company making application for admission to do business in South Carolina as a foreign corporation.

Seaboard Air Line Railroad Company respectfully requests that you file in your office, as required by law, the papers and documents described in the next preceding paragraph and accept the fees tendered to you by it so as to admit it to do business in South Carolina as a foreign corporation.

For your information, Seaboard Air Line Railroad Company is the successor in ownership and operation of the properties of Seaboard Air Line Railway Company and its Receivers, including 736 miles of railroad located in 30 counties of the State of South Carolina and 600 separate tracts of miscellaneous real estate lo-

cated in the State which are used or useful in connection with the operation of its railroad system. It operates an extensive interstate railroad system of approximately 4200 miles of railroad lines within and through the States of Virginia, North Carolina, South Carolina, Georgia, Florida and Alabama, and is a common carrier by railroad subject to the provisions of the Interstate Commerce Act. The Company was organized for the purpose of carrying out the Plan of Reorganization of Seaboard Air Line Railway Company which has been approved by the Interstate Commerce Commission and the Courts which had jurisdiction of the proceedings for the Reorganization of Seaboard Air Line Railway Company. In the proceedings before the Interstate Commerce Commission under Section 5 of the Interstate Commerce Act for authority to acquire and operate the properties of Seaboard Air Line Railway Company, Seaboard Air Line Railroad Company was relieved by the Interstate Commerce Commission of complying with the provisions of Section 8 of Article 9 of the Constitution of South Carolina and of Sections 7777, 7778 and 7779 of the Code of Laws of South Carolina, 1942, by a Report and Order dated June 28, 1946, a certified copy of which is herewith handed to you.

Respectfully yours,

J. B. S. Lyles,

Columbia, S. C.,

W. R. C. Cocke,

Norfolk, Va.,

Attorneys for Plaintiff.

The State of South Carolina
IN THE SUPREME COURT

IN THE ORIGINAL JURISDICTION

OCTOBER TERM, 1946

SEABOARD AIR LINE RAILROAD COMPANY, Plaintiff,

against

JOHN M. DANIEL, As Attorney General of the State of South Carolina, and W. P. BLACKWELL, as Secretary of State of the State of South Carolina, Defendants.

ANSWER AND RETURN
DEMURRER TO ANSWER AND RETURN

J. B. S. LYLES,
Columbia, S. C.,

W. R. C. COCKE,
Norfolk, Va.,
Attorneys for Plaintiff.

JOHN M. DANIEL, Attorney General,

M. J. HOUGH,

T. C. CALLISON, Assistant Attorneys General,
Attorneys for Defendants.

INDEX

ANSWER TO COMPLAINT AND RETURN TO RULE TO SHOW CAUSE

The defendants, answering the complaint herein, allege:

FIRST

On information and belief, the defendants admit the allegations contained in paragraphs one and two of the complaint.

SECOND

Answering paragraph three of the complaint, the defendants admit the allegations thereof which allege that the Interstate Commerce Commission issued its report and order in a proceeding before it relating to the reorganization of the Seaboard Air Line Railroad Company wherein said Commission did find and order that the plaintiff, in order to own and operate its railroad lines and other properties in South Carolina, is not required to comply with Section 8 of Article 9 of the Constitution of South Carolina and with Section 7777 through Section 7779 of the Code of Laws of South Carolina of 1942, and in said order the Commission did find and order that compliance with the Constitution and Statutory Laws would effect an unnecessary and undue burden upon interstate commerce, and would not be consistent with public interest; but the defendants allege that the said Commission exceeded its authority in undertaking to pass upon the validity of Section 8 of Article 9 of the Constitution of South Carolina and of Section 7777 through 7779 of the Code of Laws of South Carolina, 1942, and so much of said order as undertakes to nullify the Constitution of the State of South Carolina as well as its statutory laws

hereinabove referred to, was completely beyond the scope of the authority of said Commission and beyond its jurisdiction to so declare. The defendants, on information and belief, allege further that the approval by the Interstate Commerce Commission of the application of the plaintiff to purchase and operate the old Seaboard Air Line Railroad lines within the State of South Carolina may be effective to carry out the purposes of the plaintiff without conflicting with the Constitution and Statutory Laws of the State of South Carolina and that the order of the Interstate Commerce Commission which undertakes to override the Constitution and laws of the State of South Carolina is null and void *ab initio* as the said Commission in interpreting Section 5 of the Interstate Commerce Act miscontrued its authority and traveled outside of the scope of its jurisdiction in undertaking to subordinate the Constitution of the State of South Carolina and its statutory laws to the terms of said order.

THIRD

Answering the fourth paragraph of the complaint, the defendants admit the allegations therein contained, except in addition to the fact that the plaintiff is subject to the provisions of the Act of Congress relating to interstate commerce, it is otherwise subject to the provisions of the Constitution of South Carolina and the statutes of this State providing for and regulation of the organization and chartering of railroad companies doing business or seeking to do business in the State of South Carolina. The defendants further allege, in connection therewith, that the plaintiff is unauthorized to operate its line of railroad through the State of South Carolina without complying with the

provisions of the State Constitution and State laws relating thereto.

FOURTH

On information and belief, the defendants admit the allegation contained in the fifth paragraph of the complaint, and allege further in connection therewith that the Governor of the State of South Carolina had a right to assume that the Interstate Commerce Commission would not exceed its authority in passing an order which was completely beyond its jurisdiction to order the plaintiff to operate a railroad in South Carolina without requiring said railroad corporation to comply with the provisions of the Constitution and laws of said State, and that Section 5 (2) (b) of the Interstate Commerce Act (49 U. S. C. A. 5(2) (b)) clothes said Interstate Commerce Commission with no such authority. The defendant, John M. Daniel, Attorney General of the State of South Carolina, further alleges that he had no notice or information of the filing of such applications until the commencement of this action.

FIFTH

Answering the sixth paragraph of the complaint, the defendants admit that on June 28, 1946, the Interstate Commerce Commission filed its report and order undertaking to approve the acquisition and operation by the plaintiff of the lines of railroad and properties formerly owned by the Company, including the lines of railroad and properties located in the State of South Carolina. The defendants further admit that said report and order of the Interstate Commerce Commission made the findings alleged and set out in said paragraph six of the complaint; but the

defendants specifically deny the conclusions reached by said Commission in its report and order as to the illegality and invalidity of the provisions of the South Carolina Constitution and laws requiring any person or corporation seeking to operate a railroad in South Carolina to procure a South Carolina charter. The defendants further deny the findings contained in the order of the Commission which undertake to set out the approximate cost of conforming to the Constitution and laws of this State. The defendants further deny the finding in said order that a compliance with the Constitution and laws of the State of South Carolina would place an undue burden upon interstate commerce.

SIXTH

Answering the seventh paragraph of the complaint, the defendants admit that the plaintiff applied to the defendant, W. P. Blackwell, as Secretary of State of South Carolina, for admission to do business in South Carolina as a foreign corporation under the Sections of the Code of Laws of 1942 providing for domestication of foreign corporations other than railroads and with said application the plaintiff exhibited to said defendant a written stipulation or declaration as alleged in said complaint and tendered the proper fees. This defendant further admits that the plaintiff did exhibit to said defendant, as Secretary of State, certified copies of the report and order of the Interstate Commerce Commission referred to and set out in the complaint; but the said defendant denied the plaintiff admission to this State for the purpose of conducting a railroad through the same as he believed that he had no authority to grant such admission against the plain mandate of Section 8 of Article 9 of the Constitution

of South Carolina and against the provisions of Section 7777 through Section 7779 of the Code of Laws of South Carolina of 1942. The defendants further allege that they verily believe that they properly construed or interpreted said Section of the State Constitution as well as the Sections of the Code of Laws of 1942 applicable to granting of charters of railroad companies operating within said State. The defendants, therefore, deny that in refusing to admit the plaintiff to do business in South Carolina was in violation of the plaintiff's rights under the provisions of Section 5 of the Interstate Commerce Act. These defendants likewise deny that their refusal to admit the plaintiff to do business in South Carolina, without complying with the Constitution and laws of the State of South Carolina violated the provisions of Section 8 of Article 1, and the Due Process and Equal Protection Clauses of the 14th Amendment to the Constitution of the United States.

SEVENTH

On information and belief the defendants admit the allegations contained in paragraph 8 of the complaint.

EIGHTH

The defendants admit the allegations contained in the eighth, ninth and tenth paragraphs of the complaint, except so much of the tenth paragraph as alleges that if the plaintiff is required to conform to the provisions of the State Constitution and laws of South Carolina that it will thereby be deprived of its property without due process of law or that it is denied equal protection of the laws in violation of the 14th

Amendment to the Constitution of the United States, which allegation is specifically denied by the defendants. The defendants further allege, on information and belief, that there is no conflict between the provisions of the Constitution of the State of South Carolina and the statute law of said State and the valid portion of the order of the Interstate Commerce Commission and that both may be harmonized and the plaintiff enabled to comply with both the Constitution and laws of South Carolina and the order of the Interstate Commerce Commission which conforms to and is authorized by the fifth paragraph of the Interstate Commerce Act.

NINTH

Answering the eleventh paragraph of the complaint defendants, on information and belief, deny the allegations therein contained and further allege, in connection therewith, that if the plaintiff is permitted to do business in South Carolina without conforming to the provisions of the Constitution and statute law of said State as set out in the complaint that the State of South Carolina and the citizens thereof will be denied many of the rights and privileges which would otherwise enure to the benefit of the State and its citizens.

TENTH

Answering the twelfth paragraph of the complaint, the defendants allege that they make no question as to the right of the plaintiff to bring this action in the original jurisdiction of this Court, and believe that the character of the questions involved and the public interest in the prompt adjudication of the questions raised are sufficient to invoke the original jurisdiction of this Court.

ELEVENTH

On information and belief, the defendants allege as a further defense to the alleged cause of action of the plaintiff that the plaintiff is and will be engaged in both intrastate and interstate commerce, and that the best interests of the State of South Carolina and its citizens will be served by requiring the plaintiff, as a condition precedent to doing business in the State of South Carolina, to comply with the Constitution and laws of the State of South Carolina, and that such compliance will not conflict with the provisions of the Interstate Commerce Act or the valid portion of the order of the Interstate Commerce Commission set out in the complaint.

TWELFTH

That except as hereinl . re specifically admitted all material allegations of .ie complaint are respectfully denied.

Wherefore the defendants pray that this Return to Rule to Show Cause be adjudged to be sufficient; that the temporary restraining order heretofore issued be dissolved and the complaint dismissed.

JOHN M. DANIEL, Attorney General,

M. J. HOUGH,

T. C. CALLISON, Assistant Attorneys General,

Attorneys for Defendants.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND.

Personally appeared W. P. Blackwell who, being first duly sworn, says that he is Secretary of State of the State of South Carolina, and a defendant named in the above-entitled action, that he has read the foregoing answer and the same is true of his own knowledge except so much thereof as is alleged on information and belief, and as to such matters he believes same to be true.

W. P. BLACKWELL

Sworn to and subscribed before me this 6th day of September, 1946.

T. C. CALLISON, (L. S.)

Notary Public in and for S. C.

DEMURRER TO ANSWER AND RETURN

Now comes the plaintiff and demurs to the answer and return to the rule to show cause filed herein by defendants, on the ground that, on its face, it does not constitute a counterclaim or defense or return, in that it admits all allegations of fact of the complaint and states no facts or valid legal grounds as a defense or return, but alleges only various erroneous legal conclusions as reasons why plaintiff is not entitled to the relief prayed in the complaint. The said erroneous legal conclusions, together with the corresponding correct ones, are as follows, to wit:

1. Defendants allege that plaintiff is engaged in intrastate as well as interstate commerce, and is subject to and must comply with the constitutional and statutory provisions of South Carolina prohibiting a foreign railroad corporation from acquiring or operating a railroad in this State, and that, in insisting upon such compliance, defendants have not violated plaintiff's rights under the Federal Constitution or the Interstate Commerce Act;

The correct legal conclusion from the admitted facts is that plaintiff has been relieved from compliance with the constitutional and statutory prohibition of this State by the Report and Order of the Interstate Commerce Commission issued pursuant to its lawful power under the provisions of Section 5 of the Interstate Commerce Act.

2. Defendants allege that the Interstate Commerce Commission exceeded its jurisdiction under Section 5 of the Interstate Commerce Act in undertaking to relieve plaintiff from compliance with the aforesaid constitutional and statutory prohibition of this State, and

that so much of said Order as undertakes to do so is beyond the jurisdiction of the Commission and is null and void *ab initio*;

The correct legal conclusion from the admitted facts is that said Report and Order of the Commission, on their face and by their terms, show that they are entirely within the power vested in the Commission by Section 5 of the Interstate Commerce Act, and this Honorable Court has no power or jurisdiction to enjoin by indirection, set aside, annul, suspend or disregard the Order of the Interstate Commerce Commission, but must recognize the validity thereof and give the same full force and effect according to its terms:

3. Section 5 of the answer seeks to make a collateral attack on the Report and Order of the Interstate Commerce Commission and undertakes to deny (a) the conclusion of the Commission "as to the illegality and invalidity" of the aforesaid constitutional and statutory requirements of this State, and (b) the findings of the Commission as to the approximate cost of complying with said requirements, and (c) the finding of the Commission that compliance therewith would impose an undue burden on interstate commerce;

The correct legal conclusion from the admitted facts is that the Report and Order of the Commission is conclusive according to its terms unless and until set aside in a direct proceeding for that purpose instituted pursuant to the provisions of Section 207(1) of the Judicial Code of the United States (28 USCA 41 (27)), which provide the sole and exclusive remedy for challenge of such a Report and Order, and this Honorable Court has no jurisdiction to enjoin by indirection, set aside, annul, suspend or disregard the Order of the

Interstate Commerce Commission and cannot entertain any contention made by defendants as to the alleged error or invalidity of any conclusion of law or finding of fact made by the Commission in such Report and Order.

4. Defendants deny that the refusal of the Secretary of State to admit plaintiff to do business in South Carolina as a foreign corporation was in violation of plaintiff's rights under Section 5 of the Interstate Commerce Act, and that such refusal, without plaintiff having complied with the Constitution and laws of the State of South Carolina, violated the provisions of Section 8 of Article 1 of, and the due process and equal protection clauses of the Fourteenth Amendment to, the Constitution of the United States;

The correct legal conclusion from the admitted facts is that plaintiff by reason of the Report and Order of the Interstate Commerce Commission dated June 28, 1946, had the right under Section 5 of the Interstate Commerce Act and Section 8 of Article 1 of, and the due process and equal protection clauses of the Fourteenth Amendment to, the Constitution of the United States to be admitted to do business in South Carolina as a foreign corporation under Sections 7765 through 7767 of the Code.

5. Defendants allege that if plaintiff is permitted to do business without conforming to the provisions of the Constitution and laws of this State the State and its citizens will be denied many of the rights and privileges which would otherwise inure to the benefit of the State and its citizens;

The correct legal conclusion from the admitted facts is that if plaintiff is permitted to qualify to do busi-

ness in South Carolina as a foreign corporation under the provisions of Sections 7765 through 7767 of the Code, the State of South Carolina and its citizens will not be denied any rights and privileges which would or could lawfully inure to the benefit of the State and its citizens.

6. Defendants allege that plaintiff is and will be engaged in both intrastate and interstate commerce and that the best interests of the State of South Carolina and its citizens will be served by requiring the plaintiff to comply with the Constitution and laws of the State of South Carolina, and that such compliance will not conflict with the provisions of the Interstate Commerce Act or the valid portion of the Order of the Interstate Commerce Commission;

The correct legal conclusion from the admitted facts is that Section 5 of the Interstate Commerce Act and the Report and Order of the Commission thereunder, under the facts alleged in the complaint and admitted by the answer and the findings of the Commission, is effective to relieve plaintiff from the limitations, restraints and prohibitions imposed by Section 8 of Article 9 of the Constitution of South Carolina and Sections 7777 through 7779 of the Code, irrespective of the fact that plaintiff may also use its railroad in South Carolina to carry on both intrastate and interstate commerce.

Plaintiff asserts another correct legal conclusion, from the facts alleged in the complaint and admitted by the answer, to wit, that the constitutional and statutory provisions of South Carolina requiring plaintiff, a common carrier by railroad in interstate commerce, to become a corporation of this State as a condition to operating therein, impose an unreasonable and undue

burden upon interstate commerce irrespective of the findings in the Report, and of the conclusions of the Order of the Commission to that effect.

Wherefore, plaintiff submits that the answer and return raises no issue of fact and, on its face, states no counterclaim, defense or return and alleges no fact or valid conclusion of law showing that plaintiff should be denied any of the relief sought in the complaint, and plaintiff, therefore, prays that this demurrer be sustained, and for judgment in plaintiff's favor on the pleadings.

J. B. S. LYLES,

W. R. C. COCKE,

Attorneys for Plaintiff.

CERTIFICATE OF COUNSEL

We hereby certify, each for himself, that the above demurrer is meritorious, and not intended merely for delay.

J. B. S. LYLES,

W. R. C. COCKE,

Attorneys for Plaintiff.

NOTICE TO DEFENDANTS' ATTORNEYS

To Honorables John M. Daniel, Attorney General; M. J. Hough and T. C. Callison, Assistant Attorneys General, Attorneys for Defendants:

You will please take notice that plaintiff will call up the above demurrer for argument in the Supreme Court, in the Court Room in the State Capitol, on Monday, November 11, 1946, at 10 o'clock in the forenoon,

or as soon thereafter as this case is called or as the matter can be heard by the Court.

J. B. S. LYLES,

W. R. C. COCKE,

Attorneys for Plaintiff.

Service acknowledged and copy received as of the 26th day of September, 1946, without prejudice.

Attorney General,

T. C. CALLISON,
Assistant Attorneys General,

Attorneys for Defendants.

[fol. 153] IN SUPREME COURT OF SOUTH CAROLINA IN THE ORIGINAL JURISDICTION, NOVEMBER TERM, 1946

No. 2757

SEABOARD AIR LINE RAILROAD COMPANY, Plaintiff,

vs.

JOHN M. DANIEL, as Attorney General of the State of South Carolina, and W. P. BLACKWELL, as Secretary of State of the State of South Carolina, Defendants

ORDER SETTING CASE FOR REARGUMENT—June 31, 1947

On June 28, 1946, the Interstate Commerce Commission, acting under the authority purportedly conferred upon it by Section 5 of the Interstate Commerce Act, issued its report and order upon the application of the plaintiff, authorizing its reorganization; and further finding and ordering that the Seaboard Air Line Railroad Company, a Virginia Corporation, could operate its railroal lines and other properties in South Carolina without complying with Section 8 of Article IX of the State Constitution, and Sections 7777 through 7779 of the Code, which prohibit a foreign corporation from acquiring or operating a railroad in this state without first incorporating and obtaining a charter.

It was affirmatively ordered that the delay and expense that would be incurred should the reorganized railroad company undertake to comply with the Constitution and Statutes of South Carolina as to incorporation, would not accord with the national transportation policy and would not be consistent with the public interests.

[fol. 154] This action was brought by the plaintiff in the original jurisdiction of this court, praying three distinct forms of relief:

(1) a declaratory judgment adjudging that plaintiff is entitled to operate its railroad lines through South Carolina without complying with the Constitutional provisions and the applicable statutory laws of the state.

(2) For an order of mandamus directed to the Secretary of State requiring him to accept and file certain documents tendered by the plaintiff under the general

corporation law covered by Sections 7765 and 7766 of the Code, which authorize a foreign corporation, other than a railroad company, to do business in South Carolina.

(3) An injunction against the Attorney General restraining him from enforcing or attempting to enforce the provisions of Section 7784 or Section 7789 of the Code, under which sections a railroad company is penalized for its failure to comply with the Constitution and laws of the state.

The defendants filed an answer and return, and the plaintiff filed a demurrer to the answer.

In this suit, the defendants, who are Constitutional officers of South Carolina, assailed the order of the Interstate Commerce Commission as transcending the authority granted to the Commission by the Congress.

When the case was argued before us, the major issue presented was whether the report and order of the Interstate Commerce Commission was valid and effective under Section 5 of the Interstate Commerce Act to relieve the plaintiff from compliance with the Constitution and statutory provisions of South Carolina which prohibit a foreign railroad corporation from acquiring or operating a railroad in this state without first obtaining a charter. And, further, did the Interstate Commerce Commission go beyond its jurisdiction and into a field into which it was not directed by the Act of Congress in undertaking to say in what state [fol. 155] a railroad corporation should be chartered and in what state it should not be chartered, regardless of the Constitution and statutes of any particular state.

The Judicial Code, Section 208, 28 U. S. C. A., Section 46, provides that suits to enjoin, set aside, annul or suspend any order of the Interstate Commerce Commission, shall be brought in the Federal District Court against the United States. The District Courts have exclusive jurisdiction of this class of cases. While this suit in equity is not brought to enjoin or set aside an order of the Commission, yet it appears to us that the validity of the Commission's order is necessarily involved in the decision of the case, and presented as a direct issue. If we are correct in this, the question then is, should this court entertain jurisdiction at all under the order of the Chief Justice of date August 7, 1946? According to the terms of the order, original jurisdic-

tion was assumed subject to the decision of the Court as a whole, and the determination of the question of jurisdiction was reserved.

The briefs submitted by counsel for the plaintiff and the defendants do not bear, except indirectly, upon the question whether under the federal law this court should entertain jurisdiction at all to pass upon the validity of an order of the Interstate Commerce Commission such as appears to be presented here. It would seem to follow logically that if jurisdiction exists to declare the order valid, it also exists to pronounce it invalid, and hence set aside and annulled—this latter alternative being prohibited by the federal law.

Before undertaking to pass upon the major issue or the subsidiary issues involved in the case, we deem it best that this case be re-argued at the March Term of the Court, for [fol. 156] the sole purpose of hearing counsel on the question of whether this Court has jurisdiction of the subject of the action. And it is so Ordered.

D. Gordon Baker, C. J.; E. L. Fishburne, A. J.; T. H. Stukes, A. J.; C. A. Taylor, A. J.; O. Dewey Oxner, A.J.

[fol. 157] IN THE SUPREME COURT OF SOUTH CAROLINA

IN THE ORIGINAL JURISDICTION

SEABOARD AIR LINE RAILROAD COMPANY, Plaintiff,

vs.

JOHN M. DANIEL, as Attorney General of the State of South Carolina, and W. P. BLACKWELL, as Secretary of State of the State of South Carolina, Defendants

COMPLAINT DISMISSED

W. R. C. Cocke, of Norfolk, Va., and J. B. S. Lyles, of Columbia, for plaintiff.

Attorney General John M. Daniel and Assistant Attorneys General M. J. Hough and T. C. Callison, for defendants.

OPINION—Filed August 29, 1947

FISHBURNE, A. J.:

On June 28, 1946, the Interstate Commerce Commission, acting under the authority purportedly conferred upon it by Section 5 of the Interstate Commerce Act (49 U. S. C. A.

5), issued its report and order upon the application of the Seaboard Air Line Railroad Company, hereinafter referred to as the new company, authorizing it to purchase and reorganize the Seaboard Air Line Railway Company, sometimes referred to as the old company, which had been in receivership since 1930. The Commission further ordered that the Seaboard Air Line Railroad Company, a Virginia corporation, could operate its railroad lines and other properties in South Carolina without complying with Section 8 of Article IX of the state Constitution and with Sections 7777 through 7779 of the Code, which prohibit a foreign corporation from acquiring or operating a railroad in this state without first incorporating and obtaining a charter.

It was affirmatively ordered that the delay and expense which would be incurred should the reorganized railroad company undertake to comply with the Constitution and statutes of South Carolina as to incorporation, would not accord with the national transportation policy, would burden interstate commerce, and would not be consistent with the public interests.

Shortly after the filing of the Commission's order, this action was brought by the plaintiff in the original jurisdiction of this court, by permission duly granted, praying three distinct forms of relief:

(1) A declaratory judgment adjudging that plaintiff is entitled to operate its railroad lines through South Carolina without complying with the constitutional provisions and the applicable statutory laws of the state;

(2) For an order of mandamus directed to the secretary of state requiring him to accept and file certain documents tendered by the plaintiff under the general corporation law covered by Sections 7765 and 7766 of the Code, which authorize a foreign corporation, other than a railroad company, to do business in South Carolina,

(3) An injunction against the attorney general restraining him from enforcing or attempting to enforce the provisions of Section 7784 or Section 7789 of the Code under which sections a railroad company is penalized for its failure to comply with the constitution and the laws of the state relating to incorporation.

[fol. 158] In the order allowing the institution of this action in the original jurisdiction of the court, the attorney

general was restrained, pending the further order of the court, from enforcing or attempting to enforce the penalty provisions of the Code above referred to, applicable when a railroad company fails to comply with those sections relative to obtaining a charter in this state.

The defendants, who are constitutional officers of the state of South Carolina, assail the order of the Interstate Commerce Commission as transcending the power granted to the Commission by the Congress under the Interstate Commerce Act. They filed an answer and return raising this issue, and the plaintiff filed a demurrer to the answer. The case now comes before us on issues raised by the pleadings.

The major issue presented is whether the report and order of the Interstate Commerce Commission is valid and effective under Section 5 of the Interstate Commerce Act to relieve the plaintiff from compliance with the constitutional and statutory provisions of South Carolina which prohibit a foreign railroad company from acquiring and operating a railroad in this state without first obtaining a charter. And, further, did the Interstate Commerce Commission go beyond its jurisdiction and into a field into which it was not directed by the Act of Congress, in undertaking to say in what state a railroad corporation should be chartered, and in what state it should not be chartered, regardless of the constitution and statutes of any particular state. There are subsidiary questions, but a determination of the main issue will dispose of the case.

The plaintiff, under the order of the Interstate Commerce Commission, is the successor in ownership and operation of the properties of the old company which constitute an extensive railroad system, comprising approximately 4200 miles of railroad lines within and through the states of Virginia, North Carolina, South Carolina, Georgia, Florida and Alabama. Plaintiff acquired these railroad lines pursuant to the plan of reorganization approved by the Commission, and since such acquisition has been operating them as a common carrier of freight and passengers by railroad.

Included in such properties now owned and operated by the plaintiff are 736 miles of railroad located within and through thirty counties of the state of South Carolina, which embrace several of its main trunk lines. In addition, plaintiff owns over 600 miscellaneous separate tracts of real estate situated in the state of South Carolina which are

appurtenant to and used or useful in connection with the operation of its system of railroads.

As stated, the plaintiff is a corporation of Virginia. It appears from the record that the states of North Carolina, Georgia, Alabama, and Florida, do not require foreign railroad companies to incorporate. Railroad companies operate within their boundaries as foreign corporations, but are not compelled to obtain a charter therein. The plaintiff knew when it applied to the Interstate Commerce Commission under the plan of reorganization to purchase and operate the railroad system of the old company through South Carolina and the other named states, that it would be required to become a corporation of South Carolina under the constitution and laws of this state. Notwithstanding this, plaintiff made its application to the Commission alleging that it was advised that it would have power to acquire and operate the railroad system of the old company in South Carolina irrespective of the constitutional and statutory requirements—if such acquisition and operation should be authorized by the Interstate Commerce Commission.

The following statement is found in the report and order of the Interstate Commerce Commission:

"It would clearly be an unnecessary and undue burden on interstate commerce for the new company to be subjected to continuing expenses of over $300,000 a year to maintain a separate corporation to own and operate the railroad in [fol. 159] South Carolina. It is not clear, however, that the cost of organizing a corporation under the laws of South Carolina to acquire the properties in that state and thereafter consolidate the South Carolina corporation with the Virginia corporation, viz, $71,800, or the cost of maintaining the consolidated corporation as a South Carolina corporation, viz, $1,000 a year, would be unduly burdensome. Organization of a South Carolina corporation, and consolidation with the Virginia corporation, however, would cause substantial delay and needless expense."

The Commission went on to find:

"The provisions of Section 5 were further amended by the Transportation Act of 1940 which contains a declaration of the national transportation policy. The provisions as to relief from restraints, limitations and prohibitions of state law which would stand in the way of execution of the policy of Congress were clarified and strengthened. In

administering the provisions of Section 5 and other provisions of the Act we must do so with a view to carrying out the declared policy of Congress, including the promotion of economical and efficient service and the fostering of sound economic conditions in transportation. Corporate simplification wherever possible is in accord with this policy. Furthermore, a termination of a long-standing receivership of railroad properties is always a matter of substantial public interest. The delays that would result and the needless expense that would be incurred should the new company undertake to comply with the constitution and statutes of South Carolina requiring the creation of a separate corporation to acquire, or to acquire and operate, the railroad which the new company proposes to acquire and operate in that state would not accord with the national transportation policy and would not be consistent with the public interest."

It is conceded that this court has jurisdiction to determine whether the order of the Commission was a valid or invalid exercise of power under Section 5 of the Interstate Commerce Act.

The supremacy of congressional legislation over the entire subject of interstate commerce and its instrumentalities has been upheld in numerous cases. Among them may be cited the following: Houston E. & W. T. R. Co. vs. United States, 234 U. S. 342, 58 L. Ed. 1341; Alabama and V. Ry. Co. vs. Jackson and E. Ry. Co., 271 U. S. 244, 46 S. Ct. 535; Texas vs. United States, 292 U. S. 522, 54 S. Ct. 819; Morgan vs. Commonwealth of Virginia, 328 U. S. 373, 90 L. Ed. 1317, 66 S. Ct. 1050, 165 A. L. R. 574.

The defendants raise no question as to the constitutional power of the Congress to confer authority upon the Commission to approve the purchase and reorganization of the old Seaboard Air Line Railway Company. The question here has to do simply with the scope of the authority which has been conferred.

The statutory provisions are found in Section 5 of the Interstate Commerce Act, Paragraph 11, and are as follows:

"The authority conferred by this section shall be exclusive and plenary, and any carrier or corporation participating in or resulting from any transaction approved by the Commission thereunder, shall have full power (with the assent, in the case of a purchase and sale, a lease, a corporate consolidation, or a corporate merger, of a majority, unless a differ-

ent vote is required upon applicable state law, in which case the number so required shall assent, of the votes of the holders of the shares entitled to vote of the capital stock of such corporation at a regular meeting of such stockholders, the notice of such meeting to include such purpose, or at a special meeting thereof called for such purpose) to carry such transaction into effect and to own and operate any properties and exercise any control of franchises acquired through said transaction without invoking any approval under state authority; and any carriers or other [fol. 160] corporations, and their officers and employees and any other persons, participating in a transaction approved or authorized under the provisions of this section shall be and they are hereby relieved from the operation of the anti-trust laws and of all other restraints, limitations and prohibitions of law, Federal, State, or municipal insofar as may be necessary to enable them to carry into effect the transaction so approved or provided for in accordance with the terms and conditions, if any, imposed by the Commission, and to hold, maintain, and operate any properties and exercise any control or franchise acquired through such transaction. Nothing in this section shall be construed to create or provide for the creation, directly or indirectly, of a Federal corporation, but any power granted by this section to any carrier or other corporation shall be deemed to be in addition to and in modification of its powers under its corporate charter or under the laws of any state.'"

Under the foregoing provisions, any carrier or corporation participating in or resulting from any transaction approved by the Commission thereunder, shall be relieved from the operation of: (a) the anti-trust laws, and (b) all other restraints, limitations and prohibitions of law, Federal, State or municipal *insofar as may be necessary* to enable them to carry into effect the transaction so approved or provided for in accordance with the terms and conditions, if any, imposed by the Commission, and to hold, manage, and operate any properties and exercise any control or franchise acquired through such transaction.

We think it clear from the whole quoted section that the prohibition against the creation, directly or indirectly, of a federal corporation likewise excluded any power to control, limit or prohibit incorporation under state laws. And it follows that no power was conferred upon the Commission to say in what state or states a railroad company may

be incorporated or not incorporated. The Act says that any power granted to any carrier "shall be deemed to be in addition to and in modification of its powers under its corporate charter or under the laws of any state." The Commission has undertaken to say, in this transaction whereby the plaintiff has acquired the properties of the old company, that the constitution and laws of South Carolina regarding incorporation may be overridden and disregarded when no such explicit authorization was granted by the Congress.

No case directly in point has been called to our attention. The case relied upon strongly by the plaintiff, which it is asserted most nearly approximates the facts in the instant case, is Texas vs. United States, 292 U. S. 522, 54 S. Ct. 819. In that case the court held that the Interstate Commerce Commission, in the exercise of the authority conferred upon it by Section 5 of the Interstate Commerce Act, as amended by the Emergency Railroad Transportation Act, 1933, was empowered to approve a lease of the property of one railroad company to another which permitted the lessee to abandon or to remove from the state of the lessor's incorporation the railroad shops and offices, where a marked saving would result from such abandonment or removal.

It was stated that this approval was authorized notwithstanding a statute of the state of Texas requiring the lessor to retain its general offices within the state, and forbidding it from changing the location of its general offices, machine shops, or round houses save with the consent and approval of the state railroad commission. In the Texas case the question was not involved as to whether or not a railroad company must obtain a charter from Texas to operate therein. The question as to what state or states should grant charters to the railroads operating in Texas was not raised. The Commission had to deal only with the physical operation of the railroad as such operation might relate to the best interest of commerce and to insure adequate transportation service.

The Interstate Commerce Act not only fails to specifically grant authority to the Commission to deal with the matter [fol. 161] of charters, but it may be inferred, as we have pointed out, from the language used that the purpose of congress was to prohibit the Commission from directly or indirectly determining what state or states a railroad company should be incorporated in.

Unquestionably, the Commission acted within the scope of its authority in passing upon and approving the details of the reorganization plan of the Seaboard Air Line Railway, its method of financing, and whether the reorganization plans were for the best interest of interstate commerce. But it is far from clear that the Act conferred upon it the power to discriminate, in effect, against any state or states by adjudging in what state a charter should be granted.

The plaintiff contends that to comply with the statutes of South Carolina and the constitutional provision requiring that railroads operating in this state should obtain a charter, would impose an undue burden on interstate commerce.

As shown by the report and order of the Commission, the cost incident to obtaining a South Carolina charter is negligible as compared with the millions of dollars in value of the physical properties and the millions of dollars of income owned and controlled by the plaintiff. It might be inconvenient or undesirable to obtain a South Carolina charter, but we do not see how such requirement would constitute a burden on interstate commerce.

Holding as we do that the Interstate Commerce Commission lacked the power under Section 5 of the Interstate Commerce Act to authorize the plaintiff to operate its railroad lines in this state without first obtaining a charter, it necessarily follows that the complaint should be dismissed and the restraining order heretofore granted revoked.

It is so ordered.

Baker, CJ., Stukes, Taylor and Oxner, JJ., concur.

[fol. 162] IN THE SUPREME COURT OF SOUTH CAROLINA

[Title omitted]

PETITION OF SEABOARD AIR LINE RAILROAD COMPANY FOR APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed September 8, 1947

To the Honorable, the Chief Justice of the Supreme Court of South Carolina:

The petition of Seaboard Air Line Railroad Company, the plaintiff herein, respectfully shows that on August 29th, 1947, a judgment was entered herein in favor of the defendants and against the plaintiff dismissing the complaint of

the plaintiff, in which judgment and the proceedings had prior thereto in this action certain errors were committed in the prejudice of this plaintiff, all of which more fully appear from the assignment of errors which is filed herewith. Wherefore plaintiff prays that an appeal be allowed to the Supreme Court of the United States and that the record on appeal be made and certified and sent to the Supreme Court of the United States.

J. B. S. Lyles, W. R. C. Cocke, Attorneys for plaintiff.

September 8, 1947.

[fol. 163] IN THE SUPREME COURT OF SOUTH CAROLINA

[Title omitted]

ASSIGNMENT OF ERRORS—Filed September 8, 1947

Seaboard Air Line Railroad Company, a corporation, plaintiff in the above entitled cause files the following assignment of errors upon which it shall rely in prosecution of its appeal to the Supreme Court of the United States herewith petitioned for in said cause from the judgment of the Supreme Court of South Carolina entered on the 29th day of August 1947.

1. The Supreme Court of South Carolina erred in holding and deciding that under the order of the Interstate Commerce Commission issued on June 29th, 1946 plaintiff, a railroad corporation created and existing under the laws of the State of Virginia and a common carrier by railroad subject to the provisions of the Interstate Commerce Act, was not and is not authorized and empowered to acquire, own and operate the railroad lines and properties in the State of South Carolina formerly belonging to Seaboard Air Line Railway Company without complying with the provisions of Section 8 of Article 9 of the Constitution of South Carolina and with the provisions of Sections 7777, 7778 and 7779 of the Code of Laws of South Carolina, 1942, which prohibit a railroad corporation from owning or operating a railroad in said State without first securing a charter of incorporation as a corporation of South Carolina or consolidating with a corporation of South Carolina thereby becoming a corporation of said State.

[fol. 164] 2. The Supreme Court of South Carolina erred in holding and deciding that the order of the Interstate

Commerce Commission issued on June 29th, 1946, was and is invalid insofar as it authorizes plaintiff, Seaboard Air Line Railroad Company, a railroad corporation of Virginia and a common carrier by railroad subject to the provisions of the Interstate Commerce Act, to acquire, own, and operate the railroad lines and properties in the State of South Carolina formerly belonging to Seaboard Air Line Railway Company without complying with the provisions of Section 8 of Article 9 of the Constitution of South Carolina and with the provisions of Sections 7777, 7778 and 7779 of the Code of Laws of South Carolina, 1942, which prohibit a railroad corporation from owning or operating a railroad in said State without first securing a charter of incorporation as a corporation of South Carolina or consolidating with a corporation of South Carolina thereby becoming a corporation of said State.

3. The Supreme Court of South Carolina erred in holding and deciding that Section 5 of the Interstate Commerce Act as amended (49 U. S. C. A. 5) did not empower the Interstate Commerce Commission to authorize plaintiff to acquire, own and operate the railroad lines and properties in South Carolina formerly owned by Seaboard Air Line Railway Company without becoming a corporation of South Carolina.

4. The Supreme Court of South Carolina erred in failing and refusing to hold and decide that the order of the Interstate Commerce Commission dated June 29th, 1946, authorizing plaintiff to acquire, own and operate railroad properties in the State of South Carolina formerly owned by Seaboard Air Line Railway Company was valid and effective under Section 5 of the Interstate Commerce Act as amended (49 U. S. C. A. 5) to relieve plaintiff Seaboard Air Line Railroad Company, a railroad corporation of Virginia and a common carrier by railroad subject to the provisions of the Interstate Commerce Act, from compliance with the constitutional and statutory provisions of South [fol. 165] Carolina prohibiting a railroad corporation from acquiring, owning or operating a railroad in South Carolina without first becoming a corporation of said State.

5. The Supreme Court of South Carolina erred in failing and refusing to hold and decide that the provisions of Section 8 of Article 9 of the Constitution of the State of South

Carolina and the provisions of Sections 7777, 7778 and 7779 of the Code of Laws of South Carolina, 1942, prohibiting a railroad corporation from acquiring, owning or operating a railroad in South Carolina without first becoming a corporation of that State, as applied to plaintiff, a railroad corporation created and existing under the laws of the State of Virginia and a common carrier in interstate commerce, are invalid as imposing an undue and unreasonable obstruction to and burden upon interstate commerce in violation of Clause 3 of Section 8 of Article 1 of the Constitution of the United States.

6. The Supreme Court of South Carolina erred in failing and refusing to hold and decide that plaintiff, a railroad corporation created and existing under the laws of the State of Virginia and a common carrier by railroad subject to the provisions of the Interstate Commerce Act, was not and is not required to obtain a charter as a corporation of South Carolina or consolidate with a corporation of said State thereby becoming a South Carolina corporation as a condition to acquisition, ownership and operation of the railroad lines and properties in the State of South Carolina formerly owned by Seaboard Air Line Railway Company.

7. The Supreme Court of South Carolina erred in holding and deciding that the South Carolina prohibitions and requirements (Section 8 of Article 9 of the Constitution of South Carolina and Sections 7777, 7778 and 7779 of the Code of Laws of South Carolina, 1942) against a railroad corporation acquiring, owning or operating a railroad in South Carolina at all, either in intrastate or interstate commerce, without first becoming a corporation of said [fol. 166] State, are not, irrespective of the decision and order of the Interstate Commerce Commission, dated June 29th, 1946, relieving plaintiff of said prohibitions and requirements, an unreasonable obstruction to and burden upon interstate commerce and therefore invalid under Clause 3 of Section 8 of Article 1 of the Constitution of the United States.

Said Court erred in failing to hold that since plaintiff, Seaboard Air Line Railroad Company, is engaged inseparably in both intrastate and interstate commerce and that its interstate and intrastate transactions are inextricately interwoven and related, said South Carolina constitutional and statutory requirements operate as an unreasonable

obstruction to and burden upon interstate commerce and are therefore invalid under the above referred to Commerce Clause of the Constitution of the United States.

8. The Supreme Court of South Carolina erred in failing and refusing to hold and decide that plaintiff is entitled to have the Secretary of State of the State of South Carolina accept and file the appropriate papers and documents tendered him by plaintiff under Sections 7765 and 7766 of the Code of Laws of South Carolina, 1942, upon the tender of the fees prescribed by Section 7767 of said Code to qualify plaintiff as a foreign corporation to own property and transact business in South Carolina.

9. The Supreme Court of South Carolina erred in failing to hold and decide that Section 8 of Article 9 of the Constitution of South Carolina and Sections 7777, 7778 and 7779 which indiscriminately prohibit plaintiff, a railroad corporation created and existing under the laws of the State of Virginia, from acquiring, owning, or operating a railroad in South Carolina in either intrastate or interstate commerce without becoming a corporation of South Carolina, are invalid as contrary to the rights of plaintiff under Clause 3 of Section 8 of Article 1 of the Constitution of the United States to own and operate a railroad in South Carolina in interstate commerce without license, consent, obstruction, or undue burden imposed by said State.

[fol. 167] 10. The decision and judgment of the Supreme Court of South Carolina holding that plaintiff, a railroad corporation validly created and existing under the laws of the State of Virginia and a common carrier by railroad in interstate commerce, could not lawfully acquire, own or operate its railroad properties in South Carolina without first becoming a corporation of said State, deprives plaintiff of its property without due process of law and denies to plaintiff the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

11. The Supreme Court of South Carolina erred in failing and refusing to hold that the defendant John M. Daniel as Attorney General of the State of South Carolina should be perpetually restrained and enjoined from attempting to enforce against plaintiff the provisions of Sections 7784 or 7789 of the Code of Laws of South Carolina, 1942, which

impose a penalty of $500.00 a day for each county in which a railroad company shall operate without first having become a corporation of South Carolina, on the ground that since the statute of South Carolina provides no method whereby plaintiff could test in advance of incurrence of the penalties, if it should commence operation, the constitutional validity of said requirements as to incorporation in South Carolina, said Sections 7784 and 7789 of said Code are invalid as depriving plaintiff of its property without due process of law and denying to plaintiff the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

Wherefore, plaintiff prays that the said judgment may be reversed, and for such other and further relief as to the Court may seem just and proper.

J. B. S. Lyles, W. R. C. Cocke, Attorneys for Plaintiff.

[fol. 168] IN THE SUPREME COURT OF SOUTH CAROLINA

[Title omitted]

ORDER ALLOWING APPEAL TO THE SUPREME COURT OF THE UNITED STATES—September 8, 1947

The plaintiff in the above entitled cause having prayed for allowance of an appeal to the Supreme Court of the United States from the judgment made and entered in the above entitled cause by the Supreme Court of the State of South Carolina on the 29th day of August, 1947, and from each and every part thereof, and having presented and filed its petition for appeal, assignment of errors, prayer for reversal and statement as to jurisdiction, pursuant to the applicable statutes and rules of the Supreme Court of the United States; it is now

Ordered that, as provided by law, an appeal be and the same is hereby allowed to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of South Carolina rendered in this cause on the 29th day of August, 1947; and it is

Further ordered that the Clerk of this Court shall prepare and certify a transcript of the entire record, proceedings, and the opinion and judgment of the Court in this

cause, and transmit the same to the Supreme Court of the [fol. 169] United States so that he shall have the same in the said Court within forty days of this date; and it is

Further ordered that security for all damages and costs if plaintiff-appellant fail to make its plea good be fixed in the sum of Two thousand ($2,000.00) dollars; and it is

Further ordered that said appeal shall operate as a supersedeas of the judgment appealed from pending the determination of such appeal by the Supreme Court of the United States; and it is

Further ordered that the temporary restraining order issued in this cause by the Chief Justice of this Court on August 7th, 1946, restraining defendant John M. Daniel as Attorney General of South Carolina from enforcing or attempting to enforce Section 7784 or Section 7789 of the Code of Laws of South Carolina, 1942, against plaintiff, or collecting or attempting to collect any penalties therein described from plaintiff, shall remain in full force and effect until the expiration of thirty days after the date of receipt by this Court of the mandate of the Supreme Court of the United States following its decision on said appeal.

D. Gordon Baker, Chief Justice, Supreme Court of South Carolina.

Dated September 8th, 1947.

[fols. 170-189] Cost Bond on Appeal for $2,000.00 approved and filed Sept. 8, 1947, omitted in printing.

[fols. 190-193] Citation in usual form, filed Sept. 8, 1947, omitted in printing.

[fol. 194] IN THE SUPREME COURT OF SOUTH CAROLINA

[Title omitted]

STIPULATION FOR TRANSCRIPT OF RECORD ON APPEAL TO BE PROPOSED AND FORWARDED TO THE CLERK OF THE SUPREME COURT OF THE UNITED STATES—Filed September 29, 1947

It is hereby stipulated and agreed by and between the parties hereto by their attorneys of record that for the purposes of the appeal to the Supreme Court of the United States from the judgment of said Supreme Court of South Carolina entered August 29th, 1947 which was allowed herein by order of Honorable D. Gordon Baker, Chief Justice of the Supreme Court of South Carolina dated September 8th, 1947, the Clerk of the above entitled Court is requested to prepare and forward to the Clerk of the Supreme Court of the United States the transcript of the record on said appeal which shall include the entire record and proceedings in the Supreme Court of South Carolina in this cause, consisting of the following papers with all filing marks thereon:

1. Complaint in the original jurisdiction of the Supreme Court of South Carolina with all exhibits to said complaint, filed August 7th, 1946.

2. Rule to show cause and temporary restraining order issued by Honorable D. Gordon Baker, Chief Justice of the Supreme Court of South Carolina, August 7th, 1946.

3. Summons dated and filed August 7th, 1946.

4. Answer and return to rule to show cause of defendants John M. Daniel as Attorney General of the State of South [fol. 195] Carolina and W. P. Blackwell as Secretary of State of the State of South Carolina, filed September 30th, 1946.

5. Demurrer of plaintiff to answer, filed September 30th, 1946 and acknowledgment of service by attorneys for defendants.

6. Notice from attorneys for plaintiff to defendants' attorneys that demurrer to answer would be called up for argument in the Supreme Court of South Carolina on November 11th, 1946 and acknowledgment of service by attorneys for defendants.

7. Order of Court directing reargument dated and filed January 31st, 1947.

8. Opinion and judgment of the Supreme Court of South Carolina, filed August 29th, 1947.

9. Petition for Appeal.

10. Assignment of Errors.

11. Order Allowing Appeal.

12. Appeal Bond.

13. Statement as to Jurisdiction.

14. Citation.

15. Acknowledgment by attorneys for defendants on September 8th, 1947 of service of copies of (a) Petition for Appeal, (b) Order allowing Appeal, (c) Bond on Appeal, (d) Assignment of Errors, (e) Statement as to Jurisdiction, (f) Citation.

16. Statement directing attention of defendants-appellees to the provisions of paragraph 3 of Rule 12 of the Supreme Court of the United States, and acknowledgment of service by attorneys for defendants-appellees.

17. Stipulation of attorneys for appellant and appellees for transcript of record.

18. Certificate of Clerk of the Supreme Court of South Carolina certifying the record on appeal to the Supreme Court of the United States.

Dated this 29th day of September, 1947.

J. B. S. Lyles, W. R. C. Cocke, L, Attorneys for Appellant; John M. Daniel, Attorney General of S. C., T. C. Callison, Assistant Attorney General of S. C., Attorneys for Appellees.

[fols. 196-197] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 198] IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

STATEMENT OF POINTS TO BE RELIED UPON BY APPELLANT AND DESIGNATION OF THE PARTS OF THE RECORD NECESSARY FOR THE CONSIDERATION THEREOF—Filed October 18, 1947

Pursuant to the requirements of paragraph 9 of rule 13 of the rules of this Court, appellant submits the following statement of the points upon which it intends to rely on the

appeal and a designation of the parts of the record necessary for the consideration thereof.

1. The Interstate Commerce Commission had the power under Section 5 of the Interstate Commerce Act, as amended, to make the decision and order in question and to authorize appellant (as it did) to acquire, own and operate the railroad lines and other properties in South Carolina formerly belonging to Seaboard Air Line Railway Company, without compliance with the requirements of Section 8 of Article 9 of the Constitution of South Carolina and of Sections 7777, 7778 and 7779 of the Code of Laws of South Carolina, 1942, which prohibit a foreign railroad corporation from owning or operating a railroad in that State without first, either (a) obtaining a charter of incorporation [fol. 199] as a South Carolina corporation, or (b) consolidating with an existing South Carolina railroad corporation, thereby becoming a corporation of that State.

2. The Supreme Court of South Carolina erred: (a) in holding and deciding that the decision and order of the Interstate Commerce Commission, in the respect in question, was beyond the powers conferred upon it by Section 5 of the Interstate Commerce Act, as amended, and that said decision and order were not effective to relieve appellant of compliance with said state constitutional and statutory provisions; (b) in holding and deciding that the Commission, by the decision and order in question, (i) undertook to say in what state or states a railroad company could be incorporated or not incorporated, or (ii) to discriminate against any state in respect thereto; and (c) that the constitution and laws of South Carolina regarding foreign railroad corporations may be overridden and disregarded even though there is no explicit authorization therefor in the Interstate Commerce Act. The Commission made no such decision but held that under Section 5 of the Interstate Commerce Act, as amended, it was in the public interest that appellant, a Virginia corporation and a common carrier subject to the provisions of the Interstate Commerce Act, should be authorized to acquire, own and operate said railroad properties in South Carolina as a part of its interstate railroad system and to be relieved of the restraints, limitations and prohibitions of the constitution and laws of the State of South Carolina specifically referred to in Point 1 hereof.

3. In enacting Section 5 of the Interstate Commerce Act it was the clear intent of the Congress to empower the Commission to authorize a common carrier by railroad, organ- [fol. 200] ized under the laws of any state, to acquire, own and operate an entire integrated interstate railroad system, without consent of the State of South Carolina or compliance with the aforesaid constitutional and statutory provisions of said State imposing conditions on such consent, upon a finding by the Commission that such acquisition, ownership and operation would be in the public interest.

4. The constitutional and statutory provisions of South Carolina referred to in Point 1 above, in and of themselves, violate Clause 3 of Section 8 of Article 1 of the Federal Constitution by imposing an undue and unreasonable burden on interstate commerce, apart from any finding by the Commission to that effect, because said provisions absolutely prohibit any railroad corporation organized under the laws of a state other than South Carolina and engaged in both intrastate and interstate commerce, from operating as a common carrier in that State. The South Carolina law prohibits any ownership and operation at all by appellant. The intrastate and interstate operations of the interstate railroad system of appellant are so inextricably blended and intertwined that the South Carolina law effects a complete prohibition against any operation at all in South Carolina.

5. The said constitutional and statutory provisions of South Carolina and the decision and judgment of the Supreme Court of South Carolina, holding that appellant, a railroad corporation validly created and existing under the laws of the State of Virginia and a common carrier by railroad in interstate commerce, could not lawfully acquire, own or operate its railroad properties in South Carolina without first becoming a corporation of said State, deprive appellant of its property without due process of law and [fol. 201] deny to appellant the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

6. The Supreme Court of South Carolina erred in failing and refusing to hold and decide that appellant is entitled to have appellee, W. P. Blackwell, as Secretary of State of the State of South Carolina, accept and file the appropriate papers and documents tendered him by appellant under Sections 7765 and 7766 of the Code of Laws of South Caro-

lina, 1942, with a tender of the fees prescribed by Section 7767 of said Code, to qualify appellant as a foreign corporation to own property and transact business in South Carolina.

7. The Supreme Court of South Carolina erred in failing and refusing to hold that appellee, John M. Daniel, as Attorney General of the State of South Carolina, should be perpetually restrained and enjoined from attempting to enforce against appellant the provisions of Sections 7784 and 7789 of the Code of Laws of South Carolina, 1942, which impose a penalty of $500.00 a day for each county in which a railroad company shall operate without having first become a corporation of South Carolina, on the ground that, since the statutes of South Carolina provide no method whereby appellant could test in advance of incurrence of the penalties, if it should commence operation, the constitutional validity of said requirements as to incorporation in South Carolina, said Sections 7784 and 7789 of said Code are invalid as depriving appellant of its property without due process of law and as denying to appellant the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

[fol. 202] Appellant designates the entire record as necessary for the consideration of the points above stated.

W. R. C. Cocke, J. B. S. Lyles, Attorneys for Appellant.

ACKNOWLEDGMENT OF SERVICE

Service of the above and foregoing statement of points to be relied upon by appellant and designation of the parts of the record necessary for the consideration thereof acknowledged without prejudice and a true copy thereof received this 17th day of October, 1947.

John M. Daniel, Attorney General of South Carolina, T. C. Callison, Assistant Attorney General of South Carolina, Attorneys for Appellees.

[fol. 202a] [File endorsement omitted]

[fol. 203] SUPREME COURT OF THE UNITED STATES

ORDER NOTING PROBABLE JURISDICTION—October 27, 1947.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Endorsed on Cover: File No. 52,620 South Carolina Supreme Court, Term No. 390, Seaboard Air Line Railroad Company, Appellant, vs. John M. Daniel, as Attorney General of the State of South Carolina, and W. P. Blackwell, as Secretary of State of South Carolina. Filed October 7, 1947. Term No. 390 O. T. 1947.